U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEFF A. GEORGE and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF PRISIONS, Leavenworth, KS

Docket No. 02-109; Submitted on the Record;
Issued May 1, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained an injury on March 17, 2000 causally related to factors of his employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further review of the merits of his claim under 5 U.S.C. § 8128(a).

On October 25, 2000 appellant, then a 38-year-old recreation specialist, filed a traumatic injury claim alleging that on March 17, 2000 he suffered a tear in his left triceps while moving a five-gallon bucket across the room. His claim was accompanied by medical evidence.

In a November 16, 2000 letter, the Office advised appellant to submit additional factual and medical evidence supportive of his claim. In response, he submitted additional factual and medical evidence.

By decision dated December 15, 2000, the Office found the medical evidence of record insufficient to establish a causal relationship between the March 17, 2000 employment incident and a diagnosed condition. In a June 13, 2001 letter, appellant requested reconsideration of the Office's decision accompanied by medical evidence.

By decision dated August 21, 2001, the Office denied appellant's request for a merit review of his claim on the grounds that the evidence submitted was of a duplicative and irrelevant nature.[1]

[1] On appeal, appellant has submitted new medical evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).

The Board has reviewed the case record in this appeal and finds that appellant has failed to establish that he sustained an injury on March 17, 2000 causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim, including the fact that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[4]

Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5] The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.[6]

In this case, appellant alleged that he tore his left triceps when he moved a five-gallon bucket across the room on March 17, 2000. The Office found the medical evidence of record insufficient to establish that he sustained a traumatic injury due to this employment factor.

Appellant submitted treatment notes from Dr. Stewart Grote, an osteopath, covering the period April 3 through September 8, 2000 revealing that he was treated for several conditions, including his left elbow condition. Dr. Grote's treatment notes, however, are insufficient to establish appellant's burden because they failed to address whether appellant's left elbow condition was caused by the March 17, 2000 employment incident.

Appellant also submitted treatment notes from his physical therapists. The Board finds that the treatment notes of appellant's physical therapists are of no probative value inasmuch as a

[2] 5 U.S.C. §§ 8101-8193.

[3] *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[4] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *See Victor J. Woodhams, supra* note 3 at 351-52; *William E. Enright*, 31 ECAB 426, 430 (1980).

[6] *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

physical therapist is not a physician under the Act and, therefore, is not competent to give a medical opinion.[7]

Inasmuch as appellant has failed to submit rationalized medical evidence establishing that he sustained an elbow condition caused by the March 17, 2000 employment incident, the Board finds that he has failed to satisfy his burden of proof in this case.

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for further review of the merits of his claim under 5 U.S.C. § 8128(a).

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[8] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.[9] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[10] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.[11]

In support of his request for reconsideration, appellant submitted treatment notes from his physical therapist, some of which were already of record. As previously found, the treatment notes of appellant's physical therapist are of no probative value inasmuch as a physical therapist is not a physician under the Act and, therefore, is not competent to give a medical opinion.[12] Further, the treatment notes that were resubmitted on reconsideration were previously considered by the Office and found deficient. The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[13]

Similarly, Dr. Grote's treatment notes covering the period April 3 through September 8, 2000 are duplicative of evidence already contained in the record and considered by the Office.

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[7] 5 U.S.C. § 8101(2); *see also Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983).

[8] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[9] 20 C.F.R. § 10.606(b)(1)-(2).

[10] *Id*. at § 10.607(a).

[11] 20 C.F.R. § 10.608(b).

[12] 5 U.S.C. § 8101(2); *see* cases cited *supra* note 7.

[13] *See Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

Thus, they have no evidentiary value and do not constitute a basis for reopening appellant's case.[14]

Dr. Grote's treatment notes regarding appellant's high blood pressure and knees covering the period July 13, 1994 through May 10, 2001 are irrelevant to the current issue of whether appellant's elbow condition was caused by the March 17, 2000 employment incident. Evidence that does not address the particular issue involved is irrelevant and also constitutes no basis for reopening a case.[15]

Appellant neither showed that the Office erroneously applied or interpreted a point of law nor advanced a point of law not previously considered by the Office. Further, he did not submit relevant and pertinent new evidence not previously considered by the Office."[16] Therefore, appellant was not entitled to merit review of his claim.

The August 21, 2001 and December 15, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 1, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[14] *Id.*

[15] *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

[16] 20 C.F.R. § 10.606(b).