U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK KULA and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Glynco, GA

Docket No. 02-1268; Submitted on the Record;
Issued October 7, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on October 28, 2000; and (2) whether the Office of Worker's Compensation Programs properly denied his December 17, 2001 request for reconsideration.

On October 31, 2000 appellant, then a 42-year-old special agent, filed a notice of traumatic injury alleging that on October 28, 2000, while playing touch football at an employing establishment's event, he caught a pass and fell, hitting the ground and injuring his right shoulder. Appellant submitted a November 22, 2000 treatment note indicating that his right shoulder range of motion was normal and the results of an x-ray were also normal. The physician stated: "clinically this is consistent with acute tendinitis to the right shoulder,"[1] but did not provide a definitive diagnosis.

By decision dated December 3, 2001, the Office denied appellant's claim since the medical evidence was insufficient to establish causal relationship.

By letter dated December 17, 2001, appellant requested reconsideration. He resubmitted the November 22, 2000 treatment note already in the record.

By decision dated March 21, 2002, the Office denied appellant's request for reconsideration.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty on October 28, 2000.

[1] The Board is unable to determine the name of the physician.

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 the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place and in the manner alleged.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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.[7]

Appellant submitted a signed factual statement to support his claim that he injured himself while playing touch football at an employing establishment event. Because there is no inconsistent evidence of record, appellant has established that the employment incident occurred at the time, place and in the manner alleged.

Appellant did not, however, submit any rationalized medical evidence to support his claim that the incident caused an injury. Appellant only submitted a November 11, 2000 treatment note, which stated that his right shoulder was normal and provided a tentative diagnosis. The physician did not provide an opinion on the cause of appellant's alleged injury or whether the shoulder condition was attributable to appellant's employment. At the time the Office denied appellant's claim on December 3, 2001, the record did not contain sufficient medical evidence to support his claim for compensation.

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[2] 5 U.S.C. §§ 8101-8193.

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

[4] *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Id*. For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

[7] *Supra* note 4.

The Board finds that appellant did not met his burden of proof in establishing that he sustained an injury in the performance of duty on October 28, 2000, since sufficient medical evidence was not received.

The Board also finds that the Office properly denied appellant's December 17, 2001 request for reconsideration.

To require the Office to reopen a case for merit review, section 10.606 provides that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and setting forth arguments or submitting evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[8] When a claimant fails to meet at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.[9]

When appellant requested reconsideration by letter dated December 17, 2001, he did not submit any new or relevant evidence. He resubmitted the November 11, 2000 treatment note, which was already of record at the time of the Office's December 3, 2001 decision. The Board has found that the submission of evidence or legal argument, which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[10]

As appellant's December 17, 2001 request for reconsideration does not meet at least one of the three requirements for obtaining a merit review, the Board finds the Office did not abuse its discretion in denying that request.

[8] 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

[9] 20 C.F.R. § 10.608(a).

[10] *Alton L. Vann*, 48 ECAB 259 (1996).

The March 21, 2002 and December 3, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
October 7, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member