U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL J. REED and DEPARTMENT OF VETERANS AFFAIRS, AUDIE L. MURPHY MEMORIAL, San Antonio, TX

Docket No. 03-501; Submitted on the Record;
Issued April 8, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty.

On July 23, 2002 appellant, then a 48-year-old food service worker, filed an occupational disease claim alleging that the constant standing and walking of his position caused foot pain, which limited his ability to do his job.[1] Appellant did not stop work.

On August 6, 2002 the Office of Workers' Compensation Programs advised appellant of the additional factual and medical evidence needed to establish his claim. Appellant was advised that submitting a rationalized statement from his physician addressing any causal relationship between his claimed injury and factors of his federal employment was crucial. Appellant was allotted 30 days to submit the requested evidence.

On August 6, 2002 the Office requested additional factual information from the employing establishment.

On August 26, 2002 the Office received additional information from the employing establishment, including a copy of the position description. This position description noted requirements of constant standing and/or walking, with frequent lifting or moving of objects up to 30 pounds with occasional lifting up to 45 pounds. The employing establishment also provided a statement indicating that they were not aware of appellant's previous injury until July 19, 2002 and that appellant had not complained of any pain regarding the injury. Further, the employing establishment noted that appellant had in the past indicated that other employees were faster than he but did not indicate that it was due to an on-the-job injury. The employing establishment also stated that appellant had not taken any type of leave due to the injury. Additionally, an accident report for an incident on July 22, 2002 was provided.

[1] The record reflects that appellant had a previous foot injury.

In a statement received by the Office on August 26, 2002, appellant described his January 1983 injury. He explained that his foot was never set right and it kept him from doing things such as keeping up with the employees due to his being slow. He also provided treatment notes related to his 1983 injury.

In a report dated July 23, 2002, Genoveva Contreras, an employee health nurse, indicated that appellant had an injury in 1983 wherein he broke his right tibia while on the job. She stated that he had his leg casted several times while trying to get it set properly. The nurse indicated that he had long-term side effects as a result of this injury such as a limp, swelling and occasional discomfort, when trauma exacerbated. She stated that appellant found it difficult to keep up with work because the pace involved walking.

In a report dated July 23, 2002, Dr. James O. Moore, an internist, indicated that appellant came in for treatment of his ankle. He stated that appellant had an on-the-job fracture in 1983 that was treated with a splint and a cast; however, he continued to have problems with his ankle including limited range of motion and pain. Dr. Moore noted that a review of appellant's chart showed a history of "ant calcaneal [fracture] in 1983, … left ankle decreased dorsiflexion [and] no soft tissue swelling."

On August 16, 2002 the Office received appellant's personnel records and reports pertaining to his 1983 injury.

In a statement dated August 30, 2002, the employing establishment indicated that appellant was alleging that his on-the-job injury from 1983 was impacting his ability to function on the job. The employing establishment stated that appellant currently performed all functions of his food service worker position without restriction and that appellant had not called in sick or asked for light duty because of this injury. They also noted that appellant's duties required lifting, pushing, pulling, bending and stooping and that he performed all the functions without restriction.

In an October 24, 2002 decision, the Office denied appellant's claim for compensation, as he did not establish fact of injury.

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation 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."[2] These are the essential

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

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[4] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[5] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized medical 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 upon a complete factual and medical background of the claimant,[6] must be one of reasonable medical certainty[7] 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.

In the present case, the Office found that the medical evidence was insufficient to establish an injury resulting from the event.

The only medical documentation submitted from appellant was comprised of records relating to treatment for his 1983 injury. They did not establish any relationship to appellant's current claimed medical condition.

Appellant did not submit any reasoned medical evidence that his present condition was causally related to his employment. For example, appellant did not submit a medical report in which his treating physician explained why his claimed continuing condition would be related to factors of his employment.

In Dr. Moore's July 23, 2002 report, he noted that appellant came in for treatment of his ankle and noted appellant's on-the-job fracture in 1983; however, he did not offer any explanation or rationale to show that the present condition was causally related to factors of appellant's employment. In order to establish causal relationship, a physician's report must present

[3] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[4] *See Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[5] The Board has held that, in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[7] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

rationalized medical opinion evidence, based on a complete factual and medical background.[8] Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician.[9]

The Board has long held that medical opinions not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet appellant's burden of proof.[10]

Appellant also provided a July 23, 2002 report from a nurse. The Board has held that health care providers such as nurses, acupuncturists, physician's assistants and physical therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.[11]

Appellant has not submitted any rationalized medical evidence to establish that he sustained a condition causally related to factors of his employment. As appellant has not submitted the requisite medical evidence needed to establish his claim, he has failed to meet his burden of proof.

For the above-noted reasons, appellant has not established that he sustained an injury in the performance of duty.

[8] *See Kathryn Haggerty*, 45 ECAB 383 (1994).

[9] *See Gary L. Fowler*, 45 ECAB 365 (1994).

[10] *Carolyn F. Allen*, 47 ECAB 240 (1995).

[11] *Jan A. White*, 34 ECAB 515, 518 (1983).

The October 24, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 8, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member