

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGIL C. SALAZAR and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, San Francisco, CA

*Docket No. 03-1179; Submitted on the Record;
Issued August 6, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On April 30, 2002 appellant, then a 59-year-old inventory management specialist, filed an occupational disease claim alleging that he experienced abdominal, groin, hip and back pain as a result of lifting, pushing and pulling heavy boxes in the performance of duty. He identified January 10, 2002 as the date he first realized his condition was employment related. Appellant did not submit any medical evidence with his claim.

On May 17, 2002 the Office requested that appellant submit, within 30 days, additional factual information and medical evidence, including a rationalized medical report relating his claimed injury to employment factors.

The Office received a copy of appellant's employing establishment's medical records, which included recent treatment notes for abdominal and testicular pain as well as x-rays of appellant's lumbar spine and pelvis. Additionally, appellant submitted a June 10, 2002 statement.

By decision dated July 13, 2002, the Office denied appellant's claim on the grounds that he failed to submit sufficient medical evidence to establish fact of injury. By letter dated August 12, 2002, appellant requested an examination of the written record. No new evidence was submitted. By decision dated January 9, 2003, an Office hearing representative affirmed the July 13, 2002 decision. By letter dated February 7, 2003, appellant requested reconsideration. No new evidence was submitted. By decision dated February 27, 2003, the Office denied appellant's request for reconsideration.

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

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 diagnosed condition is causally related to the employment factors identified by the claimant.¹

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.²

Appellant did not submit sufficient medical evidence to establish that he sustained an employment-related injury. Medical records from January 11, 2000 to April 25, 2002 were submitted. Although the medical evidence supports that appellant experienced pain in the various areas claimed, none of the reports contain a definitive diagnosis of appellant's medical condition or present a rationalized medical opinion attributing appellant's pain to factors of his federal employment. Although the record contains some restrictions pertaining to lifting, these reports are of limited probative value on the relevant issue as they fail to contain a medical diagnosis attributed to the restrictions and they do not contain an opinion on causal relationship.³ A January 2002 treatment note advises appellant to limit heavy lifting, but fails to state that the source of appellant's complaints or condition is a result of his work activities. Although appellant attributed his abdominal complaints to heavy lifting on the job in a February 12, 2002 treatment note, there is no opinion rendered by the physician as to the cause of appellant's condition. Furthermore, treatment notes from February 2002 state that appellant's complaints could be due to his abdominal exercises. The Office requested that appellant submit a rationalized medical report relating his claimed injury to employment factors, but no such report exists. In fact, the medical record indicates that appellant initially complained of abdominal, hip, testicle and low back pain after performing push-ups. As the record is devoid of any rationalized medical evidence that attributes appellant's claimed condition to his employment exposure, the Office properly denied appellant's claim.

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

¹ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

² *Id.*

³ *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.⁴ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁵

Appellant's February 7, 2003 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2). With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered, the Office correctly noted that appellant did not submit any additional medical evidence with his February 7, 2003 request for reconsideration. Accordingly, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2). As appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office properly denied appellant's February 7, 2003 request for reconsideration.

The February 27 and January 9, 2003 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
August 6, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁴ 20 C.F.R. § 10.606(b)(2) (1999).

⁵ 20 C.F.R. § 10.608(b) (1999).