

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES JEFFERSON and DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION, Ogden, UT

*Docket No. 03-846; Submitted on the Record;
Issued June 3, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issues are: (1) whether appellant has established that his recurrent disc protrusion at L4-5 is causally related to his accepted August 7, 2001 employment incident; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration without merit review of the claim.

On August 9, 2001 appellant, then a 51-year-old dormitory manager, filed a traumatic injury claim, alleging that on August 7, 2001 he injured his lower back when a student bumped into him, causing him to lose his balance and fall.

In a duty status report (Form CA-17) dated January 16, 2002, Dr. John C. Burrell, an attending physician, noted the history of the injury and diagnosed recurrent disc protrusion at L4-5. He indicated that appellant was partially disabled from August 7, 2001 to unknown. Dr. Burrell, in a January 16, 2002 authorization for examination and/or treatment (Form CA-16), diagnosed recurrent disc protrusion at L4-5 which he attributed to appellant's falling after being bumped by a student.

By letter dated August 29, 2002, the Office requested additional information from appellant including a narrative report from his treating physician explaining how the specific incident at work contributed to his condition.

By decision dated November 12, 2002, the Office denied appellant's claim on the basis that he failed to establish that his condition was causally related to the accepted employment injury.

Appellant requested reconsideration by letter dated January 15, 2003.

On February 3, 2003 the Office denied appellant's request for a merit review of his claim.

The Board finds that appellant has not established that his recurrent disc protrusion at L4-5 is causally related to his accepted August 7, 2001 employment incident.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his 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.¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical 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.³ 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.⁴

In this case, the only medical evidence submitted by appellant are the January 16, 2002 duty status and authorization for examination and/or treatment forms completed by Dr. Burrell, who diagnosed recurrent disc protrusion at L4-5 and wrote "yes" that this condition was due to appellant's falling after being bumped by a student. Dr. Burrell did not provide a rationalized medical opinion explaining how the August 7, 2001 falling incident caused appellant's recurrent disc protrusion at L4-5. In addition, his reports are not contemporaneous to the injury as they are dated January 16, 2002 and the injury occurred on August 7, 2001. The Board has held that a medical opinion not supported by medical rationale is of little probative value.⁵ Moreover, although the Office informed appellant of the evidence that was necessary to establish his claim, appellant failed to submit any medical reports supporting a causal relationship between his condition and the August 7, 2001 employment incident. Appellant, therefore, failed to establish his claim.

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

¹ *Allen C. Hundley*, 53 ECAB ____ (Docket No. 02-107, issued May 17, 2002).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Claudio Vazquez*, 52 ECAB ____ (Docket No. 01-416, issued August 30, 2001).

⁴ *Gary L. Fowler*, 45 ECAB 365, 371 (1994); *Ern Reynolds*, 45 ECAB 690, 695 (1994).

⁵ *Annie L. Billingsley*, 50 ECAB 210, 213 (1998).

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁶ the Office's regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁷ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁸

Appellant's January 15, 2003 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he 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 by the Office, appellant did not submit any new evidence but merely resubmitted his response to the Office's questionnaire. Evidence that is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening the claim.⁹ Consequently, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).

The Board finds that appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, nor did he submit new and relevant evidence with respect to compensable work factors. Accordingly, the Office properly refused to reopen the claim for merit review.¹⁰

⁶ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

⁹ *James A. England*, 47 ECAB 115, 119 (1995); *Saundra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

¹⁰ In his appeal, appellant provided additional medical evidence; however, the Board cannot consider new evidence on appeal. 20 C.F.R. § 501.2(c). Appellant can submit the new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2) (1999).

The February 3, 2003 and November 12, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
June 3, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member