U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NEIL E. SAGERSER and DEPARTMENT OF COMMERCE,
CIVIL AERONAUTICS ADMINISTRATION, Anchorage, AK

Docket No. 02-1684; Submitted on the Record;
Issued March 5, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant's right ankle arthritis is causally related to his November 26, 1951 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record.

On November 26, 1951 appellant, then a 31-year-old guard firefighter, fractured his right fibula and tibia and anteriorly dislocated his right tibia while in the performance of duty. The Office accepted his claim and paid benefits.

In 1995 and again in 2000 appellant advised the Office that his right ankle had worsened due to severe arthritis caused by the employment injury. He requested that his case be reopened for appropriate relief. In support thereof, appellant submitted an April 9, 2001 report from his podiatrist, Dr. Dan Bangart who stated:

> "Following routine care today, [appellant] complains of pain in his right ankle. He has had a problem in this area for years. We evaluated him 4 [to] 5 years ago for the same problem but it is getting worse. [Appellant] is having more difficulty walking. [He] relates to be hurting (sic) on the job in 1951 with a severe ankle fracture and was treated in a cast only. It has been problematic over the years and getting worse and worse to the point [appellant] cannot walk 10 [to] 20 steps without significant discomfort.
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> "We x-rayed [appellant's] ankles today and compared to the contralateral side, and we find significant arthritic changes with significant joint space narrowing in the right ankle, flattening of the talus, evidence of previous fracture and malalignment of the fibula. Also significant spurring of the medial malleolus. Contralateral ankle is good condition, no signs of arthritis.
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> "[Appellant] has post-traumatic arthritis in the right ankle, which is quite severe and limiting ambulation. We discussed with him other treatment options. We

explained steps to unload the area, to limit his walking and buy more time. If this does not work, the next step would be ankle fusion to solve the problem. However [appellant] is not a good surgical candidate because of vascular status. [He] is hoping to get an electrical chair, which will help him get around without bearing weight on the ankle as much. [Appellant] will follow-up as necessary on this problem."

On August 17, 2001 the Office requested additional information, including a physician's reasoned opinion on how appellant's current right ankle condition was related to the original work injury, as opposed to any degenerative changes or subsequent ankle sprains or injury that might have occurred since the original injury.

Appellant replied on September 7, 2001. He submitted a magazine article on arthritis.[1] Appellant also submitted an August 13, 2001 report from Dr. Bangart, who stated:

> "[Appellant] has been a patient for a number of years in this office. He has a severely arthritic right ankle joint caused from fractured tibial and fibula with the anterior displacement of the talus, which occurred many years ago. The arthritis has continued to worsen with patient's ability to ambulate is severely limited. We have attempted supportive footwear and crutches, which afforded him some relief but also limited mobility. Because of his advanced weight and weakened condition the risk of falling utilizing crutches is greatly increased. We feel that it is medically necessary that the patient have an electric scooter, which would allow him greater mobility with activities of daily living."

In a decision dated November 2, 2001, the Office denied appellant's claim on the grounds that he failed to establish that the condition for which he sought compensation was caused by the injury he sustained on November 26, 1951.

Appellant requested a review of the written record by an Office hearing representative.

In a decision dated February 19, 2002, the hearing representative denied appellant's request, explaining that he was not entitled to a hearing or review of the written record as a matter of right because his injury occurred prior to July 4, 1966. The hearing representative considered the request, nonetheless and denied a discretionary hearing on the grounds that appellant could equally well address the issue his case by requesting reconsideration.

The Board finds that the medical evidence is insufficient to establish that appellant's right ankle arthritis is causally related to his November 26, 1951 employment injury.

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[1] Newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship as they are of general application and are not determinative of whether the specific condition claimed was causally related to the particular employment injury involved. Newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship as they are of general application and are not determinative of whether the specific condition claimed was causally related to the particular employment injury involved. *Gaetan F. Valenza*, 35 ECAB 763 (1984); *Kenneth S. Vansick*, 31 ECAB 1132 (1980).

A claimant seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[3] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[4]

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.[5]

The record in this case lacks a reasoned medical opinion. On August 17, 2001 the Office requested that appellant submit his physician's reasoned opinion on how the current right ankle condition was related to the original work injury, as opposed to any degenerative changes or subsequent ankle sprains or injury that might have occurred since 1951. Dr. Bangart, appellant's podiatrist, reported that appellant had a severely arthritic right ankle joint "caused from fractured tibial and fibula with the anterior displacement of the talus, which occurred many years ago." He offered no medical reasoning or analysis of appellant's medical history to support this statement. The Board has held that medical conclusions unsupported by rationale are of little probative value.[6] Because the medical opinion evidence fails to demonstrate how Dr. Bangart can determine, to a reasonable degree of medical certainty, that appellant's right ankle arthritis is causally related to an injury that occurred on November 26, 1951, appellant has not met his burden of proof.

The Board also finds that the Office properly denied appellant's request for a review of the written record.

The Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and the Office must exercise this discretionary authority in deciding whether to grant a hearing. Specifically, the Board has held that the Office has the discretion to grant a hearing where the injury occurred prior to the enactment of the 1966 amendments to the Act that provided the right to a hearing.[7]

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[2] 5 U.S.C. §§ 8101-8193.

[3] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

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

[5] *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

[6] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

[7] *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

Appellant's claim involves an injury sustained prior to the enactment of the 1966 amendments to the Act that provided the right to a hearing.[8] He is, therefore, not entitled to a hearing as a matter of right under the Act. The Office, nonetheless, has discretionary authority to grant a hearing. The Board finds that the Office properly exercised its discretionary authority in this case. In its February 19, 2002 decision, the Office hearing representative considered appellant's request and denied a discretionary hearing on the grounds that appellant could equally well address the issue in his case by requesting reconsideration. As appellant can address the issue in this case by submitting to the Office relevant medical evidence with a request for reconsideration, the Board finds that the Office properly exercised is discretionary authority in denying appellant's request for a review of the written record and properly advised him of the reasons for its decision.[9]

The February 19, 2002 and November 2, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
March 5, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[8] *See* Act of July 4, 1966, 80 Stat. 252 (conferring the right to an Office hearing to claimant's who sustained their employment injuries on or after the date of enactment, July 4, 1966).

[9] The Board has held that a denial of a claimant's request for hearing on the grounds that the claim could be considered further upon the submission of evidence with a request for reconsideration is a proper exercise of the Office's discretionary authority. *Jeff Micono*, 39 ECAB 617 (1988); *Henry Moreno*, 39 ECAB 475 (1988).