

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS STEPTOE and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 03-1276; Submitted on the Record;
Issued October 23, 2003*

DECISION and ORDER

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

The issues are: (1) whether appellant sustained injuries to his jaw and ankle or sustained an emotional condition as a result of the accepted injuries of January 7, 1983 and March 5, 1984; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

The case has been before the Board before. On January 7, 1983 appellant, then a 34-year-old clerk, injured his right knee in the performance of duty. This claim was accepted for a right knee contusion with synovitis and permanent aggravation of degenerative disease of the right knee. On March 5, 1984 appellant injured his right shoulder and neck in the performance of duty. This claim was accepted for a cervical strain and right shoulder contusion. Appellant also alleged that he sustained a right ankle condition, temporomandibular joint disease and a mental condition as a result of these injuries. By decision dated March 23, 1999, the Office denied his claim for the reason that his right ankle, jaw and mental conditions were not causally related to the accepted injuries of January 7, 1983 or March 5, 1984. On March 29, 2000 appellant requested reconsideration. By decision dated April 19, 2000, the Office denied his request after review under the clear evidence of error standard. Appellant filed an appeal and, by decision dated June 3, 2002, the Board set aside the April 19, 2000 decision and remanded the case in order for the Office to consider appellant's request under the proper timely standard for filing reconsideration.¹

By decision dated August 22, 2002, the Office reviewed appellant's case on the merits and concluded that the medical evidence did not support that appellant had sustained injuries to

¹ *Thomas Steptoe*, Docket No. 00-2068 (issued June 3, 2002). This case has been before the Board two times previous to this decision. In a July 18, 1984 decision, the Board remanded the case for further development on the issue of whether appellant sustained a recurrence. Docket No. 84-1410. In a decision dated September 10, 1993, this Board found that the Office improperly terminated appellant's compensation benefits after June 8, 1984. Docket No. 92-1632.

his jaw or ankle or a mental condition as a result of his employment. Accordingly, the Office found that the evidence submitted for reconsideration was insufficient to modify its prior decision of March 23, 1999. Appellant requested reconsideration on October 1, 2002 and, by decision dated December 18, 2002, the Office declined to modify its August 22, 2002 decision. He filed another request for reconsideration on March 18, 2003. By decision dated April 3, 2003, the Office denied appellant's request as it found that the evidence submitted in support thereof was irrelevant and insufficient to require a review of its prior decision.

The Board has duly reviewed this case record and finds that appellant has not established that he sustained injuries to his jaw and ankle or an emotional condition causally related to the accepted injuries of January 7, 1983 or March 5, 1984.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that his condition was caused or adversely affected by the employment injury. As part of this burden, he must submit rationalized medical opinion evidence showing a causal relationship between his disability and the federal employment.² Rationalized medical opinion evidence is medical evidence, which is based on a complete factual and medical background of the claimant, is one of reasonable medical certainty and is supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.³

In the instant case, appellant was first treated for jaw pain in 1984 at Tulane Medical Center Hospital and Clinic. At that time, he told the physician that, while at work, he started grinding his teeth together. There is also a note by Charity Hospital of Louisiana on August 5, 1988 indicating that appellant had knee and jaw pain. However, these records contain no clear diagnosis indicating that appellant sustained an injury to his jaw as a result of his federal employment. With regard to appellant's alleged ankle pain, Dr. S. Pearson Auerbach, the Board-certified orthopedic surgeon who saw appellant as a second opinion referral, mainly addresses the condition in his right knee. As an aside, Dr. Auerbach does indicate that it was reasonable and probable that appellant had pain and disability in both ankles, but he does not provide further explanation. Appellant's most recent medical treatment began with Dr. Raymond G. Shea, a Board-certified orthopedic surgeon, on December 15, 1993. He treated appellant for injuries to his shoulder, neck, back, hand, knee and shoulder. Dr. Shea does not mention ankle or mental conditions. He briefly mentions appellant's jaw problems. In a note dated October 9, 1995, Dr. Shea indicated that appellant just had his teeth removed. Then, in a note dated February 29, 1996, Dr. Shea indicated:

"The dental problems are related to the work-related injury and are increasing the pain [that] [appellant] is experiencing, as well as the injury to the cervical, lumbosacral spine, jaw and knee. These are work-related problems which date back to the compensation injury which occurred [at] the [employing establishment] in New Orleans."

² See *Nicolea Brusco*, 33 ECAB 1138 (1982).

³ *Gloria J. McPherson*, 51 ECAB 44, 446 (2000).

Dr. Shea's opinion is insufficient to relate appellant's jaw condition to appellant's work, as it does not contain a rationalized explanation as to how the jaw condition was related to the accepted injuries to his right knee, cervical strain or right shoulder contusion. Dr. S. Daniel Seltzer, a Board-certified orthopedic surgeon, treated appellant for his knee injury, but never addressed the ankle, jaw or mental conditions. Dr. Gary L. Reasor, a Board-certified anesthesiologist, treated appellant for his severe pain in his right knee and also noted problems with sacroiliitis affecting the right S1 joint because of his altered gait due to his knee pain. In a September 26, 2002 opinion, Dr. Reasor mentions appellant's jaw pain, for the first time, when he indicated that he was "unable to say that there is a direct causal relationship of the fall and jaw pain due to the history of the gunshot wound in the face." As Dr. Reasor clearly opines that he was unable to note a causal relationship between appellant's jaw injury and appellant's employment, his opinion is insufficient to establish a causal relationship. The only other medical evidence in the record addressing these concerns is an August 5, 1988 note by the outpatient department at Charity Hospital of Louisiana indicating that appellant suffered from, *inter alia*, chronic jaw pain; however, the hospital makes no notation regarding causation. Accordingly, appellant's allegations that he sustained an injury to his jaw and ankle causally related to his accepted injuries are not supported by the medical evidence of record. In fact, the main evidence on the matter is appellant's unsupported general allegations. The Board has held that lay individuals such as appellant are not competent to render a medical opinion.⁴ Therefore, the Office properly denied compensation for appellant's alleged injuries to his jaw and ankle.

There is very minimal discussion of any mental condition sustained by appellant as a result of his work injury by his physicians. Dr. Seltzer, a Board-certified orthopedic surgeon, in a March 5, 1984 progress note, indicated that appellant had a high level of anxiety and difficulty coping at work. Hospital notes from the emergency room at Southern Baptist Hospital indicate that appellant was seen on October 9, 1984 and that the hospital contacted Dr. Whitecloud who indicated that appellant was under treatment for severe psychiatric problems. The next notation of any psychological problems is not until December 30, 1999, when Dr. Reasor notes that appellant "would benefit from some psychological counseling in order to help him cope with his current problem." These very brief notations of mental problems do not constitute rationalized medical opinions indicating that appellant has a mental condition causally related to his accepted injuries. These notes do not constitute a diagnosis, they merely constitute sporadic mentions of a possible psychological problem. Accordingly, the Office properly denied compensation for appellant's alleged emotional condition.

The Board further finds that the Office properly refused to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain 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

⁴ *Sheila Arbour (Victor E. Arbour)*, 43 ECAB 779 (1992).

(3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁵ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).⁶

Appellant does not contend that the Office erroneously applied or interpreted a specific point of law, nor does he contend that a relevant legal argument was not previously considered by the Office. Most of the medical evidence submitted in support of appellant's request for reconsideration was already in the record. Material 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 a case.⁷ The new medical reports submitted in support of appellant's request for reconsideration mostly did not address appellant's alleged jaw and ankle pain or his emotional conditions. There is a newly submitted Tulane Medical Center note indicating that on August 9, 1984, while he was being treated for pain to his right shoulder, neck and head, he indicated that nervous tension caused him to almost kill his mother. Appellant indicated to the hospital personnel that his family was angry with him because they wanted him to return to work. The consulting psychiatrist indicated that appellant had possible adjustment disorder post injury with somatization and anxious mood, but as appellant was not homicidal or suicidal at that moment, he was released. This report is not sufficient to diagnose that a specific psychological condition resulted from appellant's employment, as the opinion is speculative and does not contain a rationalized discussion of any relationship. Accordingly, the new medical evidence is irrelevant and fails to show that the Office improperly denied reconsideration of the merits.

⁵ 20 C.F.R. § 10.606(b)(2) (i-iii).

⁶ 20 C.F.R. § 10.608(a); *see also Sharyn D. Bannick*, 54 ECAB ____ (issued April 18, 2003).

⁷ *See Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

The decisions of the Office of Workers' Compensation Programs dated April 3, 2003, December 18 and August 22, 2002 are hereby affirmed.

Dated, Washington, DC
October 23, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member