

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDMUND WIATR and DEPARTMENT OF DEFENSE,
FINANCE & ACCOUNTING SERVICE, Rome, NY

*Docket No. 03-2001; Submitted on the Record;
Issued April 8, 2004*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant established that his bilateral ganglion cysts and left-sided lateral epicondylitis conditions were sustained in the performance of duty; (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for further review on the merits under 5 U.S.C. § 8128(a).

On June 11, 2001 appellant, a 52-year-old systems accountant, filed a claim for benefits, claiming that he sustained ganglion cysts on both hands and a left-sided lateral epicondylitis condition caused by factors of his employment and that he became aware these conditions resulted from his employment as of June 11, 2001.

By letter dated July 13, 2001, the Office advised appellant that he needed to submit additional factual and medical evidence in support of his claim, including a comprehensive medical report showing that his claimed conditions were causally related to employment factors. Appellant did not submit any additional medical evidence.

By decision dated November 7, 2001, the Office denied the claim, finding that appellant failed to submit medical evidence sufficient to establish that his claimed conditions were causally related to factors of his employment.

By letter dated December 5, 2001, appellant requested a hearing, which was held on November 19, 2002.

Appellant submitted treatment notes from Dr. Mark L. Goodman, a Board-certified orthopedic surgeon, which indicated that appellant was treated from September to October 1994 and November to December 1997, for complaints of pain and numbness in his hands, fingers and shoulders and was given a diagnosis of lateral epicondylitis, left side. Dr. Goodman performed surgery on December 8, 1997 for excision of a mucous cyst on appellant's distal joint on his left middle finger and for exostectomy of the distal joint, left middle joint.

By decision dated January 15, 2003, an Office hearing representative affirmed the Office's December 5, 2001 decision, finding that appellant failed to establish that his claimed bilateral ganglion cysts and left-sided lateral epicondylitis conditions were causally related to factors of his federal employment.

By letter dated April 17, 2003, appellant requested reconsideration of the hearing representative's January 15, 2003 decision. Appellant submitted a report dated April 3, 2003 from Dr. Arne K. Pedersen, a Board-certified orthopedic surgeon. In his April 3, 2003 report, Dr. Pedersen stated that appellant presented with "a new compensation-related injury" and related that he was working for the federal government and for a labor organization, which involved sitting at a computer typing most of the day. Dr. Pedersen diagnosed bilateral epicondylitis and advised that appellant's continued elbow discomfort was secondary to chronic lateral humeral epicondylitis related to the type of work he does.

Dr. Pedersen subsequently submitted a report dated May 8, 2003. He stated:

"[Appellant] comes for follow-up regarding his elbow/upper extremities. He states that he has much less discomfort in his left elbow after the cortisone injection I gave him. He continues to experience some discomfort mainly at the lateral aspect of his right elbow and also a burning type of pain at the anterior aspects of both of his forearms but usually not into his hands. He states that the burning type of pain is bothering him significantly. At this point I think it is reasonable to obtain an EMG [electromyogram] and nerve conduction study of both upper extremities to evaluate for any type of neuropathy. I request authorization for these studies. I will see him back in my office in two months for reevaluation."

By decision dated July 31, 2003, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision. The Office stated that appellant had submitted an April 3, 2003 report from Dr. Pedersen, but did not mention that appellant had also submitted a May 23, 2003 report from Dr. Pedersen.

The Board finds that appellant did not meet his burden of proof to establish that his bilateral ganglion cysts and left-sided lateral epicondylitis conditions were sustained in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing that 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 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. 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.

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. The medical evidence required to establish causal relationship is usually rationalized medical 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.

In the present case, the reports from Dr. Goodman do not provide sufficient medical rationale to establish a causal relationship between appellant's employment and his claimed bilateral ganglion cysts and left-sided lateral epicondylitis conditions. These reports did not contain a probative, rationalized medical opinion supporting that these conditions were causally related to factors of his federal employment.

Dr. Goodman's reports indicated that appellant was treated from September to October 1994 and November to December 1997, for complaints of pain and numbness in his hands, fingers and shoulders and was given a diagnosis of lateral epicondylitis, left side. Dr. Goodman performed surgery on December 8, 1997 for excision of a mucous cyst on appellant's distal joint on his left middle finger and for exostectomy of the distal joint, left middle joint. In his reports, Dr. Goodman stated findings on examination and discussed the progression of appellant's claimed conditions, but did not provide any indication as to whether appellant's symptoms and diagnostic findings were causally related to factors of his employment.¹ Appellant, therefore, has failed to submit sufficient rationalized, probative medical evidence establishing that his bilateral ganglion cysts and left-sided lateral epicondylitis conditions were sustained in the performance of duty.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. The Office advised appellant of the type of evidence required to establish his claim; however, appellant failed to submit such evidence. Accordingly, as appellant failed to meet his burden to submit probative, rationalized medical evidence establishing that his claimed bilateral ganglion cysts and left-sided lateral epicondylitis condition

¹ See *Geraldine H. Johnson*, 44 ECAB 745 (1993).

were caused by factors or incidents of his employment, the Office properly denied appellant's claim for compensation.

The Board finds that the Office abused its discretion by refusing to reopen appellant's claim for an epicondylitis condition for review of the merits.

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.² Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.³

In support of his request for reconsideration, appellant submitted additional medical evidence, *i.e.*, Dr. Pedersen's May 23, 2003 report, which suggests the existence of a causal relationship between appellant's claimed bilateral epicondylitis condition and repetitive computer typing at work.⁴ Appellant argued that Dr. Pedersen's opinion indicated that the musculoskeletal disorder he was experiencing, epicondylitis, required a comprehensive medical examination and further diagnostic testing to determine the full extent of his condition stemming from his repetitive typing activities. This evidence constitutes new and relevant evidence pertaining to the issue in this case, *i.e.*, whether appellant's claimed epicondylitis condition was sustained in the performance of duty, which was not previously considered by the Office. The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence, which may be necessary to discharge his burden of proof.⁵ The requirements pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.⁶ If the Office should determine that the new evidence submitted lacks substantive probative value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.⁷ In this case, appellant has submitted relevant and pertinent evidence not previously considered by the Office.

Based on the circumstances discussed above, therefore, the case shall be remanded to the Office to consider Dr. Pedersen's report and the record in its entirety and determine whether appellant's bilateral epicondylitis condition is causally related to factors of his employment. The

² 20 C.F.R. § 10.606(b). *See generally* 5 U.S.C. § 8128(a).

³ *Howard A. Williams*, 45 ECAB 853 (1994).

⁴ The Office denied merit review because it stated that the "same evidence" was used to accept epicondylitis in another claim. There is no documentation to substantiate this finding in the record. The Office may, however, on remand, confirm the fact that a condition was epicondylitis was previously accepted and reaffirm the denial of ganglion cysts.

⁵ *See Paul Kovash*, 49 ECAB 350 (1998).

⁶ *See* 20 C.F.R. § 10.606(b).

⁷ *Paul Kovash*, *supra* note 5.

Board will, therefore, set aside the Office's July 31, 2003 decision. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The January 15, 2003 decision of the Office of Workers' Compensation Programs is affirmed; the Office's decision dated July 31, 2003 is set aside and remanded in accordance with this opinion.

Dated, Washington, DC
April 8, 2004

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member