

FACTUAL HISTORY

This is the second appeal concerning the merit issue of the present case. In the first appeal,¹ the Board issued a decision on August 25, 2000 which affirmed the January 28 and May 26, 1999 decisions of the Office finding that appellant did not establish that he sustained a heart attack on November 6, 1996 in the performance of duty.² The Board noted that the Office accepted that appellant performed gardening duties outside at the employing establishment, under various weather conditions, between October 5, 1995 and November 6, 1996. The Board then found that appellant did not submit medical evidence to show that these accepted employment factors caused or contributed to the heart attack he experienced on November 6, 1996.³ The facts and the circumstances surrounding the prior appeal are set forth in the initial decision and are hereby incorporated by reference.

By letter dated December 20, 2002, appellant requested reconsideration before the Office and submitted a March 13, 2001 report in which Dr. Raymond A. Haibach, an attending Board-certified family practitioner, stated that appellant was working at the employing establishment on November 6, 1996 when he suffered a heart attack and missed four weeks of work. Dr. Haibach noted that appellant's "outside work" at the employing establishment was a contributing factor to his heart attack in November 1996. By decision dated May 12, 2003, the Office denied appellant's claim that he sustained a heart attack on November 6, 1996 in the performance of duty. The Office found that appellant had not submitted sufficient medical evidence to establish that he sustained a heart attack due to the accepted employment factors, *i.e.*, performing gardening duties outside at the employing establishment, under various weather

¹ Docket No. 99-2021 (issued August 25, 2000). The Board also issued an order denying petition for reconsideration. Docket No. 99-2021 (issued January 11, 2001).

² On December 5, 1996 appellant, then a 46-year-old gardener, filed a claim alleging that he sustained a heart attack on November 6, 1996 in the performance of duty. He stated that he was in the garage getting dressed for shoveling black top when he began to feel pain in his back. Appellant later alleged that his heart attack was caused by performing outside work at the employing establishment between October 5, 1995 and November 6, 1996. He claimed that he had to work under both hot and cold weather conditions. Appellant stopped work on November 6, 1996 and returned to work on November 25, 1996. He underwent heart surgery in November 1996 and July 1997 and on June 2, 1998 he was approved for disability retirement. Appellant had a preexisting heart condition and suffered a heart attack in June 1988.

³ The Board also issued several other decisions which considered Office decisions denying other claims appellant filed for cardiac or emotional conditions. The subject matters of these decisions are not directly related to the subject matter of the present claim; none of the claims for cardiac conditions implicated the employment factors alleged in the present claim. By decision dated August 22, 1994, the Board affirmed the March 12, 1993 decision of the Office on the grounds that appellant had not met his burden of proof to establish that he sustained a heart condition on April 18, 1991 in the performance of duty. Docket No. 93-1409 (issued August 22, 1994). By decision dated March 17, 2000, the Office affirmed the July 8, 1998 decision of the Office on the grounds that appellant did not meet his burden of proof to establish his claim, filed in September 1995, that he sustained an emotional condition in the performance of duty. Docket No. 98-2374 (issued March 17, 2000). By decision dated August 17, 2000, the Board affirmed the February 4 and May 26, 1999 decisions of the Office on the grounds that appellant did not meet his burden of proof to establish his claim, filed in January 1998, that he sustained a heart condition in the performance of duty. Docket No. 99-2020 (issued August 17, 2000). By decision dated February 6, 2001, the Board affirmed the November 6, 1998 and April 26, 1999 decisions of the Office on the grounds that appellant did not meet his burden of proof to establish his claim, filed in May 1998, that he sustained a stress-related condition in the performance of duty. Docket No. 00-57 (issued February 6, 2001).

conditions, between October 5, 1995 and November 6, 1996. It determined that the opinion of Dr. Haibach did not contain adequate medical rationale in support of the physician's conclusion on causal relationship.

By letter dated June 21, 2003, appellant requested reconsideration of his claim and submitted a May 24, 2003 report of Dr. Haibach, who stated that appellant had a long-standing history of coronary artery disease and noted that he suffered a myocardial infarction on November 6, 1996 while working outside at the employing establishment. He indicated that appellant had an inferior wall myocardial infarction in July 1988 and has had known coronary artery disease since that time.⁴ Dr. Haibach noted that appellant was admitted to the hospital on May 28, 1991 for heart catheterization which showed coronary artery disease. He noted that on November 6, 1996 it was "rather cold" when appellant was working outside, that he developed chest pain, and that he suffered a minimal myocardial infarction. Dr. Haibach stated, "This information is to further support my initial statement that because of [appellant's] known coronary artery disease that working outside in cold weather increased his risk for having a myocardial infarction...."⁵ By decision dated August 25, 2003, the Office affirmed the May 12, 2003 decision. It determined that the opinion of Dr. Haibach did not contain adequate medical rationale in support of its conclusion on causal relationship.

By letter dated August 27, 2003, appellant requested reconsideration of his claim and submitted a statement dated August 27, 2003. Appellant noted that on November 6, 1996 he was putting on his hat and coat when he started feeling back pain. He stated that his back pain became more severe when he walked outside in the cold air toward the work area and posited that the cold air aggravated his back pain and was a contributing factor to his heart attack. Appellant indicated that he was not claiming his heart attack was caused by putting on his hat and coat and stated, "My claim is that working outside in extreme cold and heat from October [19]95 to November [19]96 aggr[a]vated my heart condition and was a contribution factor in causing my heart attack on November 6, 1996."

By decision dated November 25, 2003, the Office denied appellant's request for reconsideration on the grounds that his request was not timely filed and failed to present clear evidence of error. By decision dated December 9, 2003, the Office vacated the November 25, 2003 decision after finding that appellant filed a timely reconsideration request on August 27, 2003. It reviewed appellant's case on the merits and affirmed the August 25, 2003 decision. The Office indicated that appellant's claim contained such inconsistencies as to cast doubt on his assertion that he sustained injury due to performing gardening duties outside at the employing establishment, under various weather conditions, between October 5, 1995 and November 6, 1996.

By letter dated December 12, 2003, appellant requested reconsideration of the Office's prior merits decisions. Appellant claimed that the Office misinterpreted the facts in its December 9, 2003 decision and did not "cite the authority or provide evidence" to support its decision. He asserted that his August 27, 2003 statement and Dr. Haibach's March 13, 2001 and

⁴ It appears from the record that appellant actually sustained the heart attack in June 1988.

⁵ Appellant also submitted some medical reports from 1991 and 1996 which were previously of record.

May 24, 2003 reports were relevant, consistent and truthful. By decision dated December 23, 2003, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act⁶ 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.⁷ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

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 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.⁹

ANALYSIS -- ISSUE 1

In various decisions, including those dated May 12 and August 25, 2003, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to show that he sustained a heart attack on November 6, 1996 due to performing gardening duties outside at the employing establishment, under various weather conditions, between October 5, 1995 and November 6, 1996. In its December 9, 2003 decision, the Office suggested that appellant had not established the occurrence of the alleged employment incidents, *i.e.*,

⁶ 5 U.S.C. § 8101 *et seq.*

⁷ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁹ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

performing the above-mentioned outside work duties. However, the Board, in its August 25, 2000 decision, accepted that appellant performed gardening duties outside at the employing establishment, under various weather conditions, between October 5, 1995 and November 6, 1996. After the Board's August 25, 2000 decision, appellant consistently maintained that he performed such duties.¹⁰

The relevant issue is whether appellant submitted sufficient medical evidence to establish that he sustained a heart attack on November 6, 1996 due to performing gardening duties outside at the employing establishment, under various weather conditions, between October 5, 1995 and November 6, 1996. Appellant submitted reports of Dr. Haibach, an attending Board-certified family practitioner, in support of his claim, but these reports are not sufficiently well rationalized to establish his claim.

In the report dated March 13, 2001, Dr. Haibach stated that appellant was working at the employing establishment on November 6, 1996 when he suffered a heart attack and missed four weeks of work. He noted that appellant's "outside work" at the employing establishment was a contributing factor to his heart attack in November 1996. This report, however, is of limited probative value on the relevant issue in that Dr. Haibach did not provide adequate medical rationale in support of his conclusion on causal relationship.¹¹ Dr. Haibach did not provide a clear opinion regarding which aspects of appellant's "outside work" contributed to his November 6, 1996 heart attack. For example, he did not indicate which particular period of working outside contributed to appellant's heart attack. Nor did Dr. Haibach indicate what gardening duties might have contributed to his heart attack or whether he felt that exposure to certain weather conditions might have contributed to his attack. Moreover, Dr. Haibach did not provide any explanation of the medical process which would have been competent to aggravate or contribute to appellant's preexisting heart condition on November 6, 1996. His report is of limited probative value for the further reason that he did not provide a complete and accurate medical history of appellant's medical condition or explain why his heart attack was not solely due to his preexisting condition.¹²

Appellant also submitted the May 24, 2003 report of Dr. Haibach but this report is of limited probative value on the relevant issue for similar reasons. In his report, Haibach briefly

¹⁰ An employee has not met his burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence. *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982). There is no strong or persuasive evidence refuting the existence of the employment factors alleged by appellant.

¹¹ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹² See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

discussed appellant's 1988 heart attack and noted that he had "known coronary artery disease" since that time. He indicated that it was "rather cold" when appellant suffered a minimal heart attack on November 6, 1996 and stated, "This information is to further support my initial statement that because of [appellant's] known coronary artery disease that working outside in cold weather increased his risk for having a myocardial infarction...." Dr. Haibach again provided a vague opinion regarding which factors he believed contributed to appellant's heart attack on November 6, 1996. Although he implicated cold weather as a contributing factor, he did not indicate whether he felt that long-term exposure to cold weather or merely exposure to cold weather on November 6, 1996 contributed to appellant's heart attack, nor did Dr. Haibach explain the medical process through which cold weather could contribute to a heart attack in appellant's particular case. Although he provided a limited history of appellant's preexisting heart condition, he did not explain why the heart attack was not solely due to his preexisting condition. These reports are not sufficient to establish appellant's claim.¹³

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,¹⁴ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹⁵ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹⁶ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹⁷

ANALYSIS -- ISSUE 2

In connection with his December 12, 2003 reconsideration request, appellant submitted a statement in which he generally argued that the Office improperly decided his claim and asserted that previously submitted reports of Dr. Haibach supported his claim.¹⁸ However, this argument would not be relevant to the issue of the present case, *i.e.*, whether appellant submitted sufficient

¹³ A medical opinion is not dispositive simply because it is offered by a physician. *See Patricia M. Mitchell*, 48 ECAB 371 (1997). The weight of the medical evidence is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the opinion. *See Anna C. Leanza*, 48 ECAB 115 (1996).

¹⁴ Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

¹⁵ 20 C.F.R. § 10.606(b)(2).

¹⁶ 20 C.F.R. § 10.607(a).

¹⁷ 20 C.F.R. § 10.608(b).

¹⁸ Appellant did not submit any new medical evidence in support of his reconsideration request.

medical evidence to establish that he sustained a heart attack on November 6, 1996 in the performance of duty. This issue is medical in nature and should be resolved by the submission of medical evidence. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁹

In the present case, appellant has not established that the Office improperly refused to reopen his claim for a review on the merits of its prior decisions pursuant to 5 U.S.C. § 8128(a), because he 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, or submit relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a heart attack on November 6, 1996 in the performance of duty. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the December 23 and 9, August 25 and May 12, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 2, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

¹⁹ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).