United States Department of Labor
Employees' Compensation Appeals Board

G.B., Appellant	)	
and	)	**Docket No. 06-1337**
	)	**Issued: December 11, 2006**
DEPARTMENT OF THE ARMY, U.S. ARMY TROOP SUPPORT AGENCY, FORT SILL, OK, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 26, 2006 appellant filed an appeal of a January 24, 2006 nonmerit decision of the Office of Workers' Compensation Programs denying his request for review of the written record and an August 10, 2005 merit decision denying his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of disability on or after April 26, 1978 causally related to his accepted April 26, 1978 employment injury; and (2) whether the Branch of Hearings and Review abused its discretion in denying appellant's request for a review of the written record.

FACTUAL HISTORY

On April 28, 1978 appellant, a 39-year-old stock clerk, filed a traumatic injury claim alleging that on April 26, 1978 he sustained injuries to his head and shoulder in the performance of duty. He was struck in the head by a metal door while bailing cardboard. Appellant stopped work on the date of injury and returned to full duty on April 27, 1978. His claim was accepted for contusion of the left shoulder and scalp hematoma.

On March 3, 1980 appellant filed a claim for recurrence of disability. The record contains a September 10, 1980 report from Brent Keyser, a fourth-year medical student, providing a diagnosis of organic brain syndrome of unknown cause. In a February 22, 1984 report, Dr. Hans von Brauchitsch, a Board-certified psychiatrist, stated that appellant was completely disoriented and totally disabled. Although he could not ascertain the precise nature of his disease, Dr. von Brauchitsch stated that the "most likely diagnosis [was] one of dementia of undetermined origin." The record contains reports dated January 25 and July 27, 1985 from Dr. Samuel C. Jack, a Board-certified orthopedic surgeon. On January 25, 1985 Dr. Jack indicated that the date of appellant's injury was probably September 23, 1975. He noted that appellant was withdrawn, in an emotional state and appeared to have psychiatric problems. Dr. Jack stated that he did not know whether appellant's disability was in any way related to the history of injury, which was described as "cyst in the lower portion of the sacrum." In his July 27, 1985 letter, Dr. Jack related the representation made by appellant's wife that he was withdrawn, had psychotic tendencies and was totally disabled. Appellant's wife told Dr. Jack that appellant had been injured on the job when a heavy steel door struck him on the head, causing him "to be unconscious with blood and clear liquid gushing from his nose area." She also informed Dr. Jack that appellant had been playfully struck over the head by a broomstick, causing additional injury.

On October 2, 1985 the Office denied appellant's claim, finding that the medical evidence failed to establish that he sustained a recurrence causally related to the April 26, 1978 injury. On December 29, 1986 appellant submitted a request for reconsideration, which was denied by decision dated February 26, 1987.

On May 13, 2004 appellant filed a Form CA-2a, alleging a recurrence of disability as of April 26, 1978. Appellant stated that he continued to experience headaches and that he was unable to concentrate.

Appellant submitted a March 1, 2003 report from Dr. Mark W. Cotton, Board-certified in the field of family medicine.[1] Noting that Dr. Cotton had first examined appellant on July 22, 2003, he stated that appellant suffered from very severe organic brain syndrome and required continuous, 24-hour care. He indicated that appellant had sustained a back injury at work

[1] The Board notes that Dr. Cotton's report is dated March 1, 2003. However, it was received by the Office on March 31, 2004 and refers to appellant's initial visit on July 22, 2003. Therefore, it is likely that the letter was actually prepared on March 1, 2004, rather than March 1, 2003.

approximately 30 years prior[2] and later sustained a second work injury when a steel door was blown off of an incinerator, hitting appellant in the head. Dr. Cotton stated that "the injury resulted in a brain injury and organic brain syndrome." He further related that appellant had been in a comatose state for several years, but that he had become more functional over the past few years.

On May 3, 2004 the Office informed appellant that the information submitted was insufficient to establish that his claimed recurrence was related to his accepted April 26, 1978 work injury. The Office advised appellant to submit additional information within 30 days, including a narrative report from his physician which contained a diagnosis and reasoned opinion as to whether appellant was disabled from working and, if so, how his disability was causally related to the accepted injury. Appellant submitted attending physician's reports dated April 24, 1984 and January 23, 1985 from Dr. Jerry K. Martin, a treating physician, who provided diagnoses of acute severe lumbar sprain and cervico cranial syndrome. Stating that appellant had suffered a fall and was hit in the head by a piece of metal, Dr. Martin indicated that appellant had been totally disabled since January 11, 1984.

By decision dated July 19, 2004, the Office denied appellant's claim on the grounds that the evidence submitted did not establish that his claimed recurrence of disability was due to the accepted work injury.

On July 29, 2004 appellant requested reconsideration of the Office's July 19, 2004 decision. On July 29, 2004 he also submitted an appeal request form requesting an oral hearing. On September 28, 2004 appellant submitted another appeal request form requesting an oral hearing. By letter dated March 25, 2005, he reiterated his request for an oral hearing and desire that the Office disregard his request for reconsideration. Appellant submitted an undated narrative statement repeating his contention that his claimed recurrence of disability was causally related to the accepted employment injury.

At the May 25, 2005 hearing, appellant testified that on April 26, 1978 he was knocked out when he was hit in the head by a steel door that flew off of a paper bailer. He was off work for two to three weeks from the date of injury. Appellant was diagnosed with organic brain syndrome from the date of the 1978 accident and that he had "sinks" in his head. Betty Brewer, his ex-wife, testified that, although the claim was accepted for only a scalp hematoma, appellant was knocked out, suffered a severe head injury, and became totally disabled as a result of the injury. She stated that "when it happened, he didn't even know his name from Adam and Eve" and was "just plumb lost." The hearing representative informed appellant that the record would remain open for 30 days for the submission of additional evidence. Appellant submitted an August 2, 1985 letter from Dr. Martin, who indicated that he had treated appellant for injuries resulting from a September 23, 1975 accident and diagnosed acute severe lumbar strain/sprain and cervico cranial syndrome. In a letter dated June 23, 1987, Dr. von Brauchitsch opined that

[2] Appellant filed a traumatic injury claim on February 14, 1980, alleging that he injured his lower back in the performance of duty when he picked up a steel conveyor belt on September 26, 1975. His claim was accepted for lumbar strain, File No. 160030397.

appellant was so severely mentally impaired that he was totally unable to pursue gainful employment.

By decision dated August 10, 2005, the Office hearing representative affirmed the July 19, 2004 decision. He denied appellant's claim for a recurrence of disability on the grounds that there was no probative medical evidence to support a causal relationship between the April 26, 1978 work injury and the diagnosed organic brain syndrome.

On December 23, 2005 appellant requested a review of the written record. By decision dated January 24, 2006, the Office hearing representative denied appellant's request, on the grounds that he was not entitled to a second review in his case as a matter of right. The request was further denied for the reason that the issue in the case could be equally well addressed by requesting reconsideration from the Office and submitting evidence not previously submitted that appellant's current medical condition was causally related to the accepted April 26, 1978 work injury.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking compensation under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.[4] In this case, appellant has the burden of establishing that he sustained a recurrence of a disability[5] causally related to his April 26, 1978 employment injury.

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.[6]

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.[7] Where no such rationale is present, the medical evidence is of

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joan R. Donovan*, 54 ECAB 615 (2003).

[5] Recurrence of disability means "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness." 20 C.F.R. § 10.5(x) (2003).

[6] *Ronald A. Eldridge*, 53 ECAB 218 (2001).

[7] *See Joan R. Donovan, supra* note 4; *see also John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

diminished probative value.[8] An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[9]

In order to establish that his claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between his present condition and the accepted injury must support the physician's conclusion of a causal relationship.[10]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a contusion of the left shoulder and a scalp hematoma on April 26, 1978, and he was released to work without restrictions the days following his accepted injury. The medical evidence submitted in support of appellant's recurrence claim includes reports from several physicians. None of these reports provides a rationalized medical opinion establishing a causal relationship between appellant's current condition and the accepted injury.

A September 10, 1980 report from a fourth-year medical student provided a diagnosis of organic brain syndrome of unknown origin. This report does not constitute medical evidence as a medical student does not qualify as a "physician" as defined in 5 U.S.C. § 8101(2).[11] Dr. von Brauchitsch's reports also lack probative value. On February 22, 1984 Dr. von Brauchitsch stated that although he could not ascertain the precise nature of appellant's disease, the most likely diagnosis was dementia of undetermined origin. His failure to provide a specific diagnosis or an opinion as to the cause of appellant's condition diminished the probative value of his report. On June 23, 1987 Dr. von Brauchitsch opined that appellant's mental impairment rendered him unable to pursue gainful employment. However, he expressed no opinion as to the cause of appellant's condition. Dr. Jack's January 25, 1985 report speculated that the date of appellant's injury was probably September 23, 1975. It described the history of injury as a cyst in the lower portion of the sacrum and is not relevant to the instant claim. In a July 27, 1985 letter, Dr. Jack related representations made by appellant's ex-wife, who claimed that he was totally disabled as a result of an on-the-job injury sustained when a steel door hit him in the head. His report provided no specific diagnosis or medical opinion as to how appellant's current condition was caused or contributed to by his accepted condition or to the 1978 injury. Therefore, the report lacks probative value.

[8] *Mary A. Ceglia*, 55 ECAB 626 (2004).

[9] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[10] *Mary A. Ceglia, supra* note 8.

[11] Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

Dr. Cotton opined that appellant suffered from a very severe, disabling organic brain syndrome, as a result of a work injury sustained when he was hit in the head by a steel door. However, Dr. Cotton did not support his opinion with any clinical findings or an explanation as to how the April 26, 1978 injury caused appellant's current condition or how the accepted hematoma of the scalp could have developed into an organic brain syndrome. Lacking such rationale, his report is of limited probative value.[12]

Dr. Martin's 1984 and 1985 attending physician's reports indicated that appellant had been hit in the head by a piece of metal and provided diagnoses of acute severe lumbar sprain and cervico cranial syndrome. He failed to provide a rationalized explanation as to how the newly diagnosed condition was causally related to the accepted 1978 injury. Therefore, Dr. Martin's reports are also of diminished probative value.

Appellant asserted his belief that his disabling organic brain syndrome was related to his April 26, 1978 work injury. However, an award of compensation cannot be predicated upon appellant's belief of causal relationship.[13] It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for a recurrence. The record does not contain a medical report providing a reasoned medical opinion that appellant suffered a recurrence of disability causally related to the April 26, 1978 employment injury. The Board accordingly finds that appellant did not meet his burden of proof and the Office properly denied the claim.

LEGAL PRECEDENT -- ISSUE 2

Section 8124 of the Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of a final decision by the Office.[14] The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.[15]

Section 10.616(a) of Title 20 of the Code of Federal Regulations further provides, "A claimant injured on or after July 4, 1966, who had received a final adverse decision by the district Office may obtain a hearing by writing to the address specified in the decision. The claimant can choose between two formats: an oral hearing or a review of the written record.[16]

[12] *Mary A. Ceglia, supra* note 8.

[13] *See Dennis M. Mascarenas, supra* note 9.

[14] 5 U.S.C. § 8124(b)(1).

[15] *Tammy J. Kenow*, 44 ECAB 619 (1993); *Ella M. Garner*, 36 ECAB 238 (1984).

[16] 20 C.F.R. § 10.616(a). *See also Gerard F. Workinger*, 56 ECAB ___ (Docket No. 04-1028, issued January 18, 2005).

A claimant is not entitled as a matter of right to a second hearing on the same issue before the Office.[17] The Board has held that 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, including when the request is made after the 30-day period for requesting a hearing, and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[18] In these instances, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.[19]

ANALYSIS -- ISSUE 2

The Office issued a decision on January 19, 2004 denying appellant's claim for a recurrence of disability. On July 29, 2004 appellant submitted a request for an oral hearing. His request was granted and a hearing was held on May 25, 2005. By decision dated August 10, 2005, the Office hearing representative affirmed the Office's July 19, 2004 decision. On December 23, 2005 appellant requested a review of the written record.

As appellant's July 29, 2004 request for an oral hearing was granted and a hearing was held on May 25, 2005, he was not entitled to a second review as a matter of right. The Board has held that the Office has discretion to grant or deny a hearing request for a second hearing on the same issue.[20] The Office properly exercised its discretion in denying appellant's request for a review of the written record by determining that the issue could be equally well addressed by requesting reconsideration and submitting new evidence on the issue at hand.[21] The Board has held that the only limitation on the Office's discretionary authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to logic and probable deduction from established facts.[22] In the present case, the evidence of record does not establish that the Office abused its discretion in denying appellant's hearing request.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of disability that was causally related to his accepted April 26, 1978 employment injury. The Board further finds that the Branch of Hearings and Review did not abuse its discretion in denying appellant's request for a review of the written record.

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[17] *See Johnny S. Henderson*, 34 ECAB 216 (1982); *John A. Zibutis*, 33 ECAB 1879 (1982).

[18] *Samuel R. Johnson*, 51 ECAB 612 (2000); *Eileen A. Nelson*, 46 ECAB 377 (1994).

[19] *Claudio Vasquez*, 52 ECAB 496 (2001); *Johnny S. Henderson*, *supra* note 17.

[20] *See Johnny Henderson*, *supra* note 17; *see also John A. Zibutis*, *supra* note 17.

[21] *See Joseph R. Giallanza*, 55 ECAB 186 (2003).

[22] *See Andre Thyratron*, 54 ECAB 257 (2002).

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2006 and August 10, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 11, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board