United States Department of Labor
Employees' Compensation Appeals Board

DANIEL O. VASQUEZ, Appellant	)	
and	)	**Docket No. 06-568**
	)	**Issued: May 5, 2006**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Fresno, CA, Employer	)	

Appearances:
Daniel O. Vasquez, 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 January 12, 2006 appellant filed a timely appeal of a nonmerit decision of the Office of Workers' Compensation Programs dated December 14, 2005 and an Office merit decision dated October 11, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review both of these Office decisions.

ISSUE

The issues are: (1) whether appellant established that he sustained an injury in the performance of duty; and (2) whether the Office properly refused to reopen his case for further review of the merits of his claim.

FACTUAL HISTORY

On June 14, 2005 appellant, then a 54-year-old equipment mechanic, filed an occupational disease claim for compensation, noting that he was hospitalized on June 10, 2005 for dehydration and low salt while on travel for the employing establishment. In a June 30, 2005

letter, the Office advised appellant of the factual and medical evidence he needed to submit to establish his claim. It requested a comprehensive medical report containing a diagnosis and an explanation how his employment contributed to his condition.

Appellant submitted a hospital emergency department discharge instructions form that indicated he was seen on June 11, 2005 by Dr. Kevin J. Haselhorst, a Board-certified internist, for weakness and dizziness. Instructions were to increase salt in his diet for the next several days, have his blood work rechecked by his doctor and return to work.

By decision dated October 11, 2005, the Office found that the evidence supported that he experienced a bout of dizziness and weakness while on official travel; however, the medical evidence did not provide a diagnosis or relate any condition to his employment.

Appellant requested reconsideration and submitted additional reports from his visit to the hospital emergency department on June 11, 2005 at 2:55 a.m. These reports indicated complaints of vomiting and dizziness with an onset three hours earlier, a history of prior similar symptoms and of diabetes mellitus and hypertension and treatment with intravenous fluids.

By decision dated December 14, 2005, the Office found appellant's request for reconsideration insufficient to warrant a review of the merits of his case.

LEGAL PRECEDENT -- ISSUE 1

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 mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[1]

ANALYSIS -- ISSUE 1

Appellant has established that he was seen at a hospital emergency department on the night of June 11, 2003, at a time when he was traveling in the performance of his duties. However, he has not established that he met the criteria to establish that he sustained a medical condition causally related to his employment. He has not submitted medical evidence establishing the presence or existence of a disease or condition for which compensation is claimed. The medical reports submitted do not provide a diagnosis, but only recount his symptom of weakness. His claim was for dehydration, but the medical reports from his emergency department visit do not diagnose this condition. Appellant has not submitted a factual statement identifying the employment factors alleged to have caused or contributed to the

[1] *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

presence or occurrence of the disease or condition. The record contains no medical evidence establishing that employment factors were the proximate cause of the condition for which compensation is claimed. The fact that an employee was in travel status at the time a disabling condition manifested itself does not raise an inference that the condition was causally related to incidents of the employment.[2] Appellant has not submitted any evidence that would indicate his dizziness and weakness for which he went to a hospital emergency room on June 11, 2005 were related to his employment rather than to his preexisting conditions of diabetes and hypertension. He has not shown that his employment or the travel undertaken in the course of his employment contributed in any way to the June 11, 2005 episode.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review, may --
>
> (1) end, decrease, or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2), 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 new evidence not previously considered by the Office. Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. 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] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[4]

ANALYSIS -- ISSUE 2

In his December 6, 2005 request for reconsideration, appellant did not allege that the Office erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by the Office. He submitted new evidence, consisting of additional reports from his emergency department visit. However, these reports did not address the determinative issue of whether he has a condition causally related to his employment and they,

[2] *Rene Bonnin*, 38 ECAB 193 (1986); *Stanley K. Takahasi*, 35 ECAB 1065 (1984).

[3] *Eugene F. Butler*, 36 ECAB 393 (1984).

[4] *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

therefore, do not require the Office to reopen appellant's case for further review of the merits of his claim.

CONCLUSION

Appellant has not established that he sustained an injury in the performance of duty. The Office properly refused to reopen his case for further review of the merits of his claim.

ORDER

IT IS HEREBY ORDERED THAT the December 14 and October 11, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 5, 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