United States Department of Labor
Employees' Compensation Appeals Board

E.G., Appellant	)	
and	)	**Docket No. 06-1240**
	)	**Issued: September 12, 2006**
DEPARTMENT OF VETERANS AFFAIRS, VETERAN ADMINISTRATION MEDICAL CENTER, Omaha, NE, Employer	)	

Appearances:
E.G., 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 May 1, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 14, 2006 which denied his recurrence of disability claim. Appellant also appealed a decision dated April 14, 2006 which denied a request for an oral hearing. 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 met his burden of proof to establish that he sustained a recurrence of disability on March 30, 2005 causally related to the accepted employment injury of June 4, 1992; and (2) whether the Office properly denied appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b)(1).

FACTUAL HISTORY

On June 10, 1992 appellant, a 41-year-old laundry worker, filed a traumatic injury claim alleging that on June 4, 1992 he injured his shoulder while lifting and pulling laundry. He did not stop work but continued in a light-duty position until June 29, 1992 when he resumed his regular full-time duties. The Office accepted that appellant sustained right supraspinatus tendinitis and strain of the right trapezius.

On May 23, 2005 appellant filed a claim for recurrence of disability noting that he experienced right shoulder pain on March 30, 2005. He returned to work on March 31, 2005. Appellant submitted employing establishment medical records from June 8 to 29, 1992, prepared by Dr. M.J. Swartz, an internist, who noted that appellant developed right shoulder pain while lifting laundry. Dr. Swartz listed findings, diagnosed supraspinatus tendinitis and released appellant to full duty on June 29, 1992. Appellant submitted other employing establishment medical records from August 15 to 29, 1997 which addressed his treatment for a right shoulder strain which was resolving. A March 25, 2005 report, signed by a physician whose signature is illegible, noted that appellant sustained a right rotator cuff tear at work on June 4, 1992 and was reinjured in August 1997. In a May 25, 2005 report, Dr. Steven X. Goebel, a Board-certified orthopedic surgeon, treated appellant for a large right shoulder rotator cuff tear. He recommended surgical arthroplasty to repair the tear and advised that appellant could return to work subject to physical restrictions.

In a letter dated June 16, 2005, the Office notified appellant that his 1992 claim was processed as an uncontroverted claim that resulted in minimal or no time lost from work and was administratively handled to allow medical payments up to $1,500.00. The Office stated that the merits of his claim had not been adjudicated and would be reopened to consider his recurrence of disability claim and request for surgery. The Office noted that appellant resumed regular duties on June 29, 1992 and that he sustained another injury in 1997. On June 16, 2005 the Office also advised appellant of the factual and medical evidence needed to establish his claim for recurrence of disability. It requested that he submit a report from an attending physician addressing the relationship of his claimed condition and specific employment factors.

In a letter dated July 5, 2005, appellant stated that his duties included loading and unloading laundry and linen carts, removing dirty linen as well as other laundry duties. He noted that his injury has been ongoing since 1992 and had worsened in 2005.

In a decision dated September 13, 2005, the Office denied appellant's claim for recurrence of disability. It found that the evidence was insufficient to establish that he sustained a recurrence of disability commencing March 30, 2005 causally related to his work injury of June 4, 1992.

In a letter dated October 26, 2005, appellant requested reconsideration and submitted additional medical evidence. In a report dated March 30, 2005, Dr. Goebel noted that appellant reported that his shoulder ached for approximately one year; but did not attribute his condition to a specific injury. He noted that appellant's work duties required him to pull 300- to 700-pound laundry carts. On physical examination, appellant exhibited slightly weak abduction, weak external rotation and crepitance in the subacromial space. Dr. Goebel diagnosed right shoulder

rotator cuff tendinitis. In a report dated May 18, 2005, he noted that appellant reported doing well until he tripped and fell and thereafter experienced right shoulder pain. On May 25, 2005 Dr. Goebel noted that a magnetic resonance imaging (MRI) scan of the right shoulder dated May 21, 2005 revealed a four centimeter tear of the supraspinatus and infraspinatus tendon insertions, subacromial/subdeltoid bursitis and degenerative labrum. On June 3, 2005 he performed a right shoulder arthroscopy with debridement of a degenerative labral tear as well as partial biceps tears, right shoulder arthroscopic subacromial decompression without acromioplasty and right shoulder mini open rotator cuff repair. Dr. Goebel diagnosed right shoulder massive rotator cuff tear, degenerative labral tear and partial biceps tendon tear and subacromial bursitis of the right shoulder. In reports dated June 10 to July 27, 2005, he noted that appellant was progressing well post surgery and could return to work subject to physical restrictions. On October 5, 2005 Dr. Goebel noted that appellant "certainly does have the indications over the number of years in his job duty that he could have had this from a work-related type of injury." He continued appellant's work restrictions. Also submitted were physical therapy notes from June 6 to October 24, 2005.

In a decision dated February 14, 2006, the Office denied modification of the September 13, 2005 decision.

On March 2, 2006 appellant requested an oral hearing before an Office hearing representative. Appellant submitted several duty status reports dated May 18, 2005 to February 8, 2006 which addressed his permanent restrictions. He also submitted physical therapy notes from August 8 to 10, 2005.

In a decision dated April 14, 2006, the Office's Branch of Hearings and Review denied appellant's request for an oral hearing. The Branch of Hearings and Review found that, since appellant had previously requested reconsideration on the same issue, he was not entitled to an oral hearing as a matter of right. Appellant was informed that his case had been considered in relation to the issues involved, and his request was further denied for the reason that the issues in this case could be addressed by requesting reconsideration from the Office and submitting evidence not previously considered.

LEGAL PRECEDENT -- ISSUE 1

A "recurrence of disability" means an inability to work after an employee has returned to work, caused by a spontaneous change in a medial condition which resulted from a previous injury or illness without an intervening injury or a new exposure to the work environment.[1] Where appellant claims a recurrence of disability due to an accepted employment-related injury, he or he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.[2] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally

[1] 20 C.F.R. § 10.5(x).

[2] *Robert H. St. Onge,* 43 ECAB 1169 (1992).

related to the employment injury.[3] Moreover, the physician's conclusion must be supported by sound medical reasoning.[4]

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[5] In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[6] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[7]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained right supraspinatus tendinitis and strain of the right trapezius in the performance of duty. However, the medical record lacks a well-reasoned narrative from appellant's physicians explaining how his claimed recurrent disability and condition, beginning March 30, 2005 is causally related to his accepted employment injury.

Appellant submitted employing establishment medical records from March 25, 2005, that noted a history of a right rotator cuff tear injury occurring on June 4, 1992 and which appellant reinjured in August 1997. However, the record does not establish that appellant sustained a rotator cuff tear due to the accepted 1992 injury or that the 1997 injury was employment related.[8] On March 30, 2005 Dr. Goebel noted appellant reported an aching shoulder for approximately one year which he attributed to his work duties which included pulling 300- to 700-pound laundry carts. This appears to implicate new employment exposures rather than a spontaneous change in the right shoulder condition. Dr. Goebel did not adequately explain why the rotator cuff or other degenerative tears could be attributed to the June 4, 1992 employment injury. The Board has found that vague and unrationalized medical opinions on causal relationship have little

[3] Section 10.104(a)-(b) of the Code of Federal Regulations provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. The physicians report should include the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions, and the prognosis. 20 C.F.R. § 10.104.

[4] *See Robert H. St. Onge, supra* note 2.

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship,* Chapter 2.805.2 (June 1995).

[6] For the importance of bridging information in establishing a claim for a recurrence of disability, s*ee Robert H. St. Onge, supra* note 2; *Shirloyn J. Holmes,* 39 ECAB 938 (1988); *Richard McBride,* 37 ECAB 748 (1986).

[7] *See Ricky S. Storms,* 52 ECAB 349 (2001); *Morris Scanlon,* 11 ECAB 384, 385 (1960).

[8] For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *See Alice J. Tysinger,* 51 ECAB 638 (2000).

probative value.[9] Moreover, in a report dated May 18, 2005, Dr. Goebel attributed appellant's current right shoulder condition to a trip and fall incident, again implicating a new injury. Dr. Goebel did not address whether this incident was employment related. Therefore, these reports are insufficient to meet appellant's burden of proof.

Other reports from Dr. Goebel dated May 25, 2005 to July 27, 2005 addressed appellant's condition post surgery and his return to work subject to various restrictions. He failed to further explain whether appellant sustained a recurrence of disability on March 30, 2005 causally related to the accepted employment injury of June 4, 1992.[10] Dr. Goebel's report of October 5, 2005 stated that appellant "certainly does have the indications over the number of years in his job duty that he could have had this from a work related type of injury." At best, this report provides only speculative support for a possible causal relationship as Dr. Goebel qualified his opinion by noting that appellant's employment "could have" caused his condition.[11] He provided insufficient medical reasoning to support his opinion on causal relationship. Therefore, these reports are insufficient to meet appellant's burden of proof.

Other medical evidence submitted by appellant either predate the period of claimed recurrent disability or do not specifically address causal relationship between the accepted tendinitis condition and his claimed recurrence of disability.

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[12] Section 10.615 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.[13] The Office's regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought and also that "the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision."[14]

[9] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[10] *See Jimmie H. Duckett*, *supra* note 9.

[11] *See Jennifer Beville*, 33 ECAB 1970 (1982) (where the Board found a physician's statement that appellant's complaints "could have been" related to an employment incident to be speculative and of limited probative value).

[12] 5 U.S.C. § 8124(b)(1).

[13] 20 C.F.R. § 10.615.

[14] 20 C.F.R. § 10.616(a).

Additionally, the Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation Act,[15] has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[16] The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.[17]

ANALYSIS -- ISSUE 2

Appellant's request for an oral hearing dated March 2, 2006 was denied on the grounds that he had previously requested reconsideration on October 26, 2005 under 5 U.S.C. § 8128(a) of the Act.[18] In its April 14, 2006 decision, the Office found that appellant was not entitled to an oral hearing as a matter of right. It considered the matter in relation to the issue involved and, under its discretionary authority, denied the request as appellant could pursue his claim by requesting reconsideration and submitting rationalized medical evidence in support of his claim.

Appellant's request for an oral hearing, dated March 2, 2006, was made after the Office issued its February 14, 2006 decision on his request for reconsideration made pursuant to 5 U.S.C. § 8128. The Office properly found that appellant was not entitled to an oral hearing before an Office hearing representative as a matter of right as he had previously requested reconsideration. The Office properly exercised its discretion in denying appellant's hearing request on the basis that the case could be equally well addressed by requesting reconsideration and submitting additional medical evidence. There is no evidence of an abuse of discretion in this case.[19]

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability or a medical condition beginning March 30, 2005 causally related to his accepted employment-related injury in June 4, 1992. The Board further finds that

[15] 5 U.S.C. §§ 8101-8193.

[16] *Marilyn F. Wilson*, 52 ECAB 347 (2001).

[17] *Teresa M. Valle*, 57 ECAB ___ (Docket No. 06-438, issued April 19, 2006). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

[18] *See Peggy R. Lee*, 46 ECAB 527 (1995) (where the Board found that appellant's request for an oral hearing was made after the Office issued its decision on his request for reconsideration made pursuant to 5 U.S.C. § 8128 and therefore appellant was not entitled to an oral hearing before an Office hearing representative as a matter of right.)

[19] *See Daniel J. Perea*, 42 ECAB 214 (1990).

the Office properly denied appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b)(1).[20]

ORDER

IT IS HEREBY ORDERED THAT the April 14 and February 14, 2006 and September 13, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 12, 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

[20] With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).