

FACTUAL HISTORY

This case was previously before the Board.¹ By decision dated August 8, 2008, the Board affirmed a November 30, 2007 decision that terminated appellant's wage-loss compensation and medical benefits. The facts and the law of the case in the Board's prior decision are incorporated herein by reference.

On December 19, 2007 appellant requested reconsideration before the Office and submitted additional evidence. Medical reports dated November 14 and December 4 and 29, 2007 do not mention appellant's accepted December 14, 2005 injury and contain diagnoses of lumbar spine stenosis, osteoarthritis, synovitis, degenerative joint disease, sciatica and hypertension, conditions not accepted by the Office. In an August 31, 2007 report, Dr. Michael K. Vandenberg, an attending rheumatologist, stated that appellant's treating chiropractor referred him for a rheumatologic evaluation. He noted that in May 2003 appellant fell at work while descending stairs on a ship and landed on his knees. Appellant was out of work for three months. In December 2005 he slipped again and injured his right knee. Dr. Vandenberg provided findings on physical examination and the results of blood tests and other diagnostic tests. In a January 31, 2008 report, he noted that appellant sustained low back pain after slipping on a wet floor at work in 2003, slipped on stairs and fell in 2004, injuring his knees, and injured his right knee again in 2005 when he struck it against a rail. Dr. Vandenberg provided findings on physical examination and diagnosed osteoarthritis of the knees, possible calcium pyrophosphate dehydrate deposition disease (CPPD), synovitis of the knees, ankles and metatarsal joints and lumbar spinal stenosis. He opined that the work injuries in 2003, 2004 and 2005 caused a portion of appellant's current pain syndrome and therefore his condition was employment related.

By letter postmarked August 12, 2008, appellant requested an oral hearing.

By decision dated November 13, 2008, the Office denied appellant's claim for disability after November 29, 2007 on the grounds that the evidence was not sufficient to establish any continuing disability or medical condition causally related to his December 14, 2005 employment injury.

By decision dated January 16, 2009, the Office denied appellant's request for a hearing on the grounds that he had previously requested reconsideration and was not entitled to a hearing as a matter of right. It exercised its discretion and determined that the issue in the case could be addressed equally well through a reconsideration request and the submission of new evidence.²

¹ See Docket No. 08-625 (issued August 8, 2008). On March 17, 2007 appellant, then a 60-year-old engine utility man, filed a claim for a traumatic injury on December 14, 2005 when he bumped his right knee in the engine room of a ship. The Office accepted his claim for an aggravation of effusion of a joint in his right lower leg. On November 30, 2007 it terminated appellant's wage-loss compensation and medical benefits effective November 29, 2007 on the grounds that the weight of the medical evidence established that he had no residual medical condition or disability causally related to his December 14, 2005 employment injury.

² The Board notes that, while this appeal was pending, the Office issued a November 3, 2009 decision denying an October 6, 2009 request for reconsideration as untimely. The November 3, 2009 decision is null and void. See *Douglas E. Billings*, 41 ECAB 880 (1990).

LEGAL PRECEDENT -- ISSUE 1

Where the Office meets its burden of proof in justifying termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the employment injury.³ In order to prevail, the employee must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.⁴

ANALYSIS -- ISSUE 1

The Board finds that, following the termination of appellant's wage-loss compensation and medical benefits on November 29, 2007, he failed to establish that he had any continuing disability or medical condition causally related to his December 14, 2005 employment-related condition, aggravation of effusion of the right leg.

The November 14 and December 4 and 29, 2007 medical reports do not mention appellant's accepted December 14, 2005 injury and the reports contain diagnoses of lumbar spine stenosis, osteoarthritis, synovitis, degenerative joint disease, sciatica and hypertension, conditions not accepted by the Office. On August 31, 2007 Dr. Vandenberg noted that appellant fell at work in May 2004 while descending stairs on a ship and landed on his knees. Appellant was out of work for three months. In December 2005 he slipped again and injured his right knee. Dr. Vandenberg provided findings on physical examination and the results of blood tests and other diagnostic tests. In a January 31, 2008 report, he noted: appellant sustained low back pain after slipping on a wet floor at work in 2003; slipped on stairs and fell on his knees in 2004; and injured his right knee again in 2005 when he struck it against a rail. Dr. Vandenberg provided findings on physical examination and diagnosed osteoarthritis of the knees, possible CPPD, synovitis of the knees, ankles and metatarsal joints and lumbar spinal stenosis. He opined that the 2003, 2004 and 2005 injuries at work caused a portion of his current pain syndrome and therefore his condition was employment related. However, Dr. Vandenberg did not provide medical rationale explaining how appellant's disability or medical condition after November 29, 2007 was causally related to his December 14, 2005 employment injury, aggravation of effusion of the right leg. Although he opined that appellant's current pain syndrome was work related, he did not explain why appellant's right knee condition persisted or how his pain syndrome was causally related to the 2005 employment injury rather than to one of his other diagnosed conditions. Dr. Vandenberg did not differentiate between appellant's accepted right knee condition and his nonwork-related conditions and he failed to explain how his current medical problems were caused or aggravated by the December 14, 2005 work incident. For these reasons, the medical evidence is not sufficient to establish that appellant had any residual disability or medical condition after November 29, 2007 causally related to his accepted December 14, 2005 right knee condition. Appellant has not met his burden of proof.

³ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Anna M. Blaine*, 26 ECAB 351, 353-54 (1975); see *Fred Foster*, 1 ECAB 127, 132-33 (1948).

⁴ *I.J.*, *supra* note 3; *Gary R. Sieber*, 46 ECAB 215, 222 (1994); see *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

Accordingly, the Office properly denied his claim for wage-loss compensation and medical benefits after November 29, 2007.

On appeal appellant asserts that the Office mishandled his claims in the case on appeal, Office File No. xxxxxx003, and in File No. xxxxxx852 regarding an accepted injury on May 11, 2005 for sprained ankles. He contends that the Office mixed up medical records in the two claims. However, appellant did not specify which medical records were mishandled or how his compensation claims were affected.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act, concerning a claimant's entitlement to a hearing before an Office hearing representative, states: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section 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."⁵ A hearing is a review of an adverse decision by an Office hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record. In addition to the evidence of record, the claimant may submit new evidence to the hearing representative.⁶ A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which the hearing is sought.⁷ A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision.⁸ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁹ In such a case, it will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.¹⁰

ANALYSIS -- ISSUE 2

On August 12, 2008 appellant requested an oral hearing and a review of the written record. Because he had previously requested reconsideration under section 8128 of the Act, he was not entitled to a hearing as a matter of right under section 8124(b)(1). The Office exercised its discretion and determined that the issue in the case could be resolved equally well through a

⁵ 5 U.S.C. § 8124(b)(1).

⁶ 20 C.F.R. § 10.615.

⁷ *Id.* at § 10.616(a).

⁸ *James Smith*, 53 ECAB 188 (2001).

⁹ 20 C.F.R. § 10.616(b).

¹⁰ *James Smith*, *supra* note 8.

request for reconsideration and the submission of additional evidence. The Board finds that the Office did not abuse its discretion in denying appellant's request for an oral hearing in its January 16, 2009 decision.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he had any employment-related disability or medical condition after November 29, 2007 causally related to his December 14, 2005 employment injury. The Board further finds that the Office did not abuse its discretion in denying appellant's request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 16, 2009 and November 13, 2008 are affirmed.

Issued: February 16, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board