

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARLOS GARCIA and DEPARTMENT OF THE ARMY,
ARMY DEPOT, Corpus Christi, TX

*Docket No. 98-423; Submitted on the Record;
Issued August 25, 1999*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant carried his burden of proof to establish that he sustained a left knee condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

On March 4, 1997 appellant, then a 48-year-old equipment specialist, filed a notice of traumatic injury and claim for compensation alleging that he sustained a complex tear in the posterior horn of the medial meniscus of his left knee. Appellant stated that he was unable to determine the cause of injury because from one day to another his knee started to swell. On the reverse side of the CA-1 form, the employing establishment indicated that appellant "feels previous job series, aircraft mechanic work, is cause of knee problems."

In support of his claim, appellant submitted an x-ray report dated January 10, 1997, which showed large suprapatellar joint effusion in the left knee, etiology unknown.

In a January 22, 1997 report, Dr. Michael M. Heckman, a Board-certified orthopedic surgeon, noted that appellant was evaluated for recurrent swelling and medial joint line pain associated with his left knee, noting that "appellant does not recall any history of significant injury and has no history of past injuries." The doctor noted physical findings and diagnosed probable medial meniscal injury versus underlying degenerative arthritis. He recommended an magnetic resonance imaging (MRI) scan and prescribed a steroid injection.

An MRI scan dated January 27, 1997 confirmed, a complex tear with loss of inner third of the meniscal tissue, joint space narrowing and joint effusion.

In an operative report dated February 21, 1997, Dr. Heckman noted that appellant had continuing difficulties associated with left knee pain and swelling. The doctor indicated that he performed an arthroscopy and partial medial meniscectomy on appellant's left knee. His

postoperative diagnosis included degenerative medial meniscal tear and Grade III chondromalacia medial femoral condyle and trochlea.

By letter dated May 8, 1997, the Office requested that appellant submit additional evidence in support of his claim.

In a decision dated June 16, 1997, the Office denied compensation on the grounds that appellant failed to establish that his knee condition was caused by an employment factor.

On July 3, 1997 appellant requested reconsideration and submitted copies of medical bills from his insurance provider.

In a decision dated September 17, 1997, the Office denied appellant's request for merit review.

The Board finds that appellant failed to carry his burden of establishing that he sustained a left knee condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her 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 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.² These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. There are two components involved in establishing fact of injury which must be considered. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused personal injury.⁵ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.

An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton* 40 ECAB 1143 (1989).

³ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Elaine Pendleton*, *supra* note 4.

⁵ *Id.*

employment.⁶ To establish causal relationship, appellant must submit a physician's report, in which the physician reviews the factors of employment identified by appellant as causing his injury and, taking these into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his opinion.⁷

In the instant case, the Office denied compensation because the medical evidence was insufficient to establish that appellant's left knee condition was caused by factors of his employment. Although appellant submitted examination and surgical reports from Dr. Heckman indicating that he sustained a medial meniscal tear to the left knee, the doctor provided no opinion on the etiology of appellant's condition. Dr. Heckman specifically stated that appellant did not recall any history of significant injury and noted no history of past injuries. Appellant also submitted an MRI scan and operative reports, but that evidence does not address the issue of whether appellant's condition was causally related to his alleged employment injury. In the absence of a rationalized medical opinion to establish a causal relationship between appellant's diagnosed condition and the factors of his employment, the Board finds that appellant has failed to meet his burden of proof in this case.

The Board also finds that the Office properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

Section 8128(a) of the Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.⁸ The Office, through its regulations, has imposed a one-year time limitation for a request of review to be made following a merit decision of the Office.⁹ The regulations provide that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law, or (2) advancing a point of law or a fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.¹⁰ When the 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.¹¹ 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.¹² Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.¹³

⁶ See *Woodhams*, *supra* note 3.

⁷ *Id.*

⁸ 5 U.S.C. § 8128; *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁹ 20 C.F.R. § 10.138(b)(2).

¹⁰ 20 C.F.R. § 10.138(b)(1).

¹¹ *Id.* 20 C.F.R. § 10.138(b)(2).

¹² *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

¹³ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.¹⁴

In the instant case, appellant did not show that the Office erroneously applied or interpreted a point of law and did not advance a point of law or fact not previously considered by the Office. In support of his request for reconsideration, appellant submitted a statement of medical bills from his insurance provider related to the treatment of appellant's alleged employment-related condition. Since medical bills are not considered relevant and material evidence on the issue of causal relationship, the Office properly found that appellant's evidence on reconsideration did not meet the requirements set forth at 20 C.F.R. § 10.138.

The Board has held that the only limitation on the Office's authority is reasonableness and abuse of discretion is generally shown through proof of manifest error.¹⁵ Such was not the case here and the Board finds that the Office properly denied appellant's application for reconsideration of this claim.

The decisions of the Office of Workers' Compensation dated September 17 and June 16, 1997 are hereby affirmed

Dated, Washington, D.C.
August 25, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁴ *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

¹⁵ *See Daniel J. Perea*, 42 ECAB 214 (1990).