U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVEN HOCHBERG and U.S. POSTAL SERVICE,
POST OFFICE, Sarasota, FL

Docket No. 03-1101; Submitted on the Record;
Issued September 5, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied his request for reconsideration.

On January 24, 2002 appellant, then a 61-year-old letter carrier, filed a notice of traumatic injury alleging "stress" and injury to both knees because his treating physician increased his working hours from four to five hours per day. Dr. John T. Moor, appellant's Board-certified orthopedic surgeon, stated in a January 21, 2002 work restriction evaluation that appellant could work five hours and could walk continuously for five hours per day and also indicated "arthritis bilateral knees." Appellant stopped work on January 25, 2002 and has not returned.

By letter dated February 12, 2002, the Office requested that appellant submit additional factual and medical evidence in support of his claim. Appellant submitted a handwritten progress note from Nurse Cindy D. Campbell diagnosing "major depression" and a February 2, 2002 report which stated:

> "[Appellant] was seen January 31, 2002 for a psychiatric evaluation. [Appellant] will need ongoing medication evaluation and individual psychotherapy in order to treat the current mood disorder. Chronic pain is a significant contributor to the level of depression. It is essential that [appellant] receive a pain management evaluation with Dr. Donald Erb."

Dr. Glenn Tobias diagnosed appellant with "anxiety" and "situational anxiety" and marked "yes" that the diagnosis was related to the on-the-job injury. By decision dated April 1,

2002, the Office denied appellant's claim on the grounds that appellant did not establish fact of injury.[1]

By letter dated June 3, 2002, appellant requested reconsideration and submitted an April 18, 2002 report from Ms. Campbell,[2] who stated: "[Appellant] really agitated over [employing establishment] and their requirements, frustrated and feels has to keep doing other requirements." Appellant claimed that he went to see Ms. Campbell because it was approved by his employing establishment and did not know that evidence from her was not considered "probative." By decision dated June 26, 2002, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was cumulative and insufficient to warrant merit review.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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 period 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.[4] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place and in the manner alleged.[6] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[7] An employee may establish that an injury

[1] The Office noted in its decision that Dr. Sandler diagnosed appellant with Hepatitis C in a report dated December 7, 2001, however, this report is not in the record and there is no record of a Dr. Sandler.

[2] The physical therapist report dated April 8, 2002 was for a patient named Robin O'Neill and was not for appellant.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

[6] *John J. Carlone*, 41 ECAB 354 (1989).

[7] *Id*.

occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[8]

In this case, appellant alleged that he suffered from "stress" on January 24, 2002 because his attending physician increased his work hours from four to five hours per day. He submitted evidence indicating that he stopped work on January 25, 2002 and told his supervisor that he was leaving on "stress leave." Appellant has therefore established that he actually experienced the claimed event at the time, place and in the manner alleged. He also submitted medical records from Ms. Campbell diagnosing "major depression" and from Dr. Tobias diagnosing "anxiety" and "situational anxiety." A nurse practitioner is not considered a "physician" as defined by the Act and his or her opinion regarding diagnosis or causal relationship is of no probative value.[9] As defined by the Act in 5 U.S.C. § 8101(2), "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law.[10] Therefore, Ms. Campbell's diagnosis of "major depression" and opinion on causal relationship has no probative value. Dr. Tobias diagnosed "anxiety" and "situational anxiety" and marked "yes" that appellant's condition was due to his employment, however, he did not provide a rationalized medical opinion on the cause of appellant's condition. The Board held in *Vicky L. Hannis*[11] that a medical opinion not fortified by medical rationale is of little probative value. The Board also held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, it has little probative value and is insufficient to establish causal relationship.[12] Appellant has the burden to submit rationalized medical opinion evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[13] Appellant did not submit a physician's rationalized medical opinion relating his diagnosed condition to federal employment factors. As such, he did not meet his burden of proof in establishing his claim.

The Board also finds that the Office properly denied appellant's request for reconsideration.

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by the Office, or submitted relevant and

[8] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. *Frazier V. Nichol*, 37 ECAB 528 (1986).

[9] *Sheila A. Johnson*, 46 ECAB 323 (1994).

[10] *See also Arnold A. Alley*, 44 ECAB 912 (1993); *Sheila Arbour* (*Victor E. Arbour*), 43 ECAB 779 (1992); *Barbara J. Williams*, 40 ECAB 649 (1989).

[11] *Vicky L. Hannis*, 48 ECAB 538 (1997).

[12] *Linda L. Mendenhall*, 41 ECAB 532 (1990).

[13] *Mary Margaret Grant*, 48 ECAB 696 (1997).

pertinent new evidence not previously considered by the Office.[14] 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.[15] 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.[16] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[17]

In support of his June 3, 2002 request for reconsideration, appellant submitted a report from Ms. Campbell, whose report is cumulative as it restates information already contained in the record and reviewed by the Office and is insufficient to warrant merit review.[18] The report is also not from a "physician" as defined by the Act and has little probative value regarding appellant's condition or the relationship to employment factors.[19] Appellant did not allege that the Office erroneously applied or interpreted a point of law and he did not advance a point of law or fact not previously considered by the Office. As appellant did not meet at least one of the above-mentioned requirements for obtaining a merit review, the Office properly denied his request.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated June 26 and April 1, 2002 are hereby affirmed.

Dated, Washington, DC
September 5, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[14] 20 C.F.R. § 10.606(b)(2).

[15] 20 C.F.R. § 10.608(b).

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

[17] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[18] *Eugene F. Butler*; *Bruce E. Martin*, *supra* note 16.

[19] *Sheila A. Johnson*, *supra* note 9.