United States Department of Labor
Employees' Compensation Appeals Board

JOHN TEACHOUT, Appellant	)	
and	)	**Docket No. 04-2191**
	)	**Issued: February 9, 2005**
DEPARTMENT OF VETERANS AFFAIRS, HINES VETERANS HOSPITAL, Hines, IL, Employer	)	

Appearances:
John Teachout, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On September 8, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 2, 2003 merit decision and June 8, 2004 nonmerit decision denying his claim for compensation benefits. Pursuant to 20 C.F.R. §§, 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury causally related to factors of his federal employment; and (2) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On June 12, 2003 appellant, then a 58-year-old electrician, filed an occupational disease claim alleging that, "after a period of time of lifting batteries and electrical supplies," he experienced pain and numbness and loss of legs." Appellant stated that he first became aware of

his injury on January 1, 2000 but delayed filing the Form CA-2, thinking the pain would go away because he was being treated with steroid injections. He also stated that he had sustained a previous injury in October 1997.

On June 24, 2003 the Office notified appellant that the information previously submitted was insufficient to substantiate his claim and advised him to provide within 30 days from the date of its letter: a comprehensive medical report from his treating physician which described his symptoms; results of examinations and tests; diagnosis; the treatment provided; the effect of the treatment; and the doctor's opinion, with medical reasons, on the cause of his condition; and an explanation as to how incidents in his federal employment contributed to his condition. The Office also requested detailed information regarding the alleged employment-related activities appellant believed contributed to his condition.

On August 4, 2003 appellant submitted a copy of the Office's deficiency letter with handwritten notes reflecting that his injuries occurred "at work, lifting" and that he received shots twice. Appellant also submitted numerous unsigned progress notes, radiology reports and laboratory reports from September 15, 1997 through July 13, 2003. The progress notes were all marked "WORK COPY – NOT FOR MEDICAL RECORD." (Emphasis in the original.) The notes indicated that, after lifting 80 to 90 pounds of batteries at work on September 8, 1997, appellant suffered injuries for which he required surgery. In unsigned notes dated January 10, 2000, Dr. Michelle Wolcott, a treating physician, stated that appellant had had two steroid injections in the past with moderate relief and that he reported that his pain, numbness and weakness had not worsened but that he had occasional episodes of "giving way." According to internist, appellant was scheduled for an emergency magnetic resonance imaging (MRI) scan as a result of pain progression and urinary symptoms. Dr. Scott's impression at that time was "L4-5 isthmic spondylolisthesis with radiculopathy, likely traction on L4 nerve route." On June 4, 2003 appellant was scheduled for surgery which occurred on June 17, 2003. Unsigned notes dated July 13, 2003 reflect "Primary diagnosis: spine abnormality" Unsigned radiology reports dated May 30, 2003 reflect impressions of "disc degeneration and dis[c] space narrowing at L4-5 associated with spondylolisthesis of L4 over L5" and "degenerative change of the lower thoracic and lumbar spine." An unsigned June 17, 2003 post-surgery radiology report revealed impressions of: "first degree spondylolisthesis of L4 over L5. Status post laminectomy and posterior spinal fusion of L4 and L5 with metallic screws for fixation. Remaining bony structure is intact." An unsigned June 20, 2003 radiology report reflected "no definite fracture." None of the medical records addressed a causal relationship between appellant's condition and conditions of his employment.

On August 12, 2003 the Office denied appellant's claim, stating that the medical evidence did not demonstrate that his claimed medical condition was related to established work-related events.

On September 15, 2003 appellant submitted a request for reconsideration and a hearing.[1] In support of his request, appellant submitted written comments on his copy of the formal decision issued by the Office, noting that the injury date was in 1997 and that his 1997 medical

[1] Appellant's request for a hearing was made more than 30 days after the date of the Office's decision and therefore was untimely. 20 C.F.R. § 10.616.

records had not been considered. Appellant also submitted a variety of medical reports, including documents relating to his alleged 1997 injury. In an unsigned progress note dated August 20, 2003, Dr. Tim Noonan, a treating physician, stated that appellant was "doing well" and that he reported "occasional radicular pain with certain positions, but minor." A form dated August 22, 2003 and signed by Dr. Noonan, indicated that appellant could return to work on September 1, 2003 "with desk duty only" and that he needed a break at least once per hour to alleviate pressure. The space on the form designated for "diagnosis" was left blank.

On December 2, 2003 the Office denied appellant's request for reconsideration, finding that none of the medical evidence submitted established any connection between the claimed conditions and any specific work factors alleged. The Office stated that the fact that appellant had a previously approved claim for a back strain did not establish that any recent work factors were medically connected to his current diagnosed condition. The Office further stated that appellant had failed to show a recurrence of work-related disability.

On January 21, 2004 appellant again requested reconsideration, and resubmitted medical evidence already of record. By decision dated June 8, 2004, the Office denied appellant's request for reconsideration, stating that he had submitted no new medical evidence explaining a causal relationship between appellant's 1997 work injury or work factors subsequent to 1997 and his condition in 2003.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim, including the fact that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[3]

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 the 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 diagnosed condition is causally related to the employment factors identified by the claimant.[4] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e*., medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to claimant's diagnosed condition. To be of probative value, the opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the

[2] 5 U.S.C. §§ 8101-8193.

[3] *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

[4] *Solomon Polen*, 51 ECAB 341, 344 (2000).

diagnosed condition and the specific employment factors identified by the claimant.[5] Furthermore, the Board has consistently held that unsigned medical reports are of no probative value[6] and that any medical evidence upon which the Office relies to resolve an issue must be in writing and signed by a qualified physician.[7]

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[8]

ANALYSIS -- ISSUE 1

The medical evidence presented does not provide sufficient facts or a rationalized medical opinion to establish that appellant sustained an injury in the performance of duty that was causally related to his employment. Evidence which includes a medical report is necessary to establish that the condition for which appellant claimed he sought treatment was related to her employment.[9] Because they are unsigned, the numerous medical reports in the record are of no probative value.[10] The only signed medical report in evidence is the August 22, 2003 "back to work" form signed by Dr. Noonan, which provides no diagnosis or discussion of causal relationship.

Therefore, there is no medical evidence of record that appellant did sustain a diagnosed medical condition. Furthermore, his statements that "after a period of time of lifting batteries and electrical supplies," he experienced pain and numbness and loss of legs;" that his injuries occurred "at work, lifting; " and that he had sustained a previous injury in October 1997, are insufficient to establish a causal relationship.[11] There is no medical evidence of record which explains the physiological process by which appellant's work activities would have caused the diagnosed condition.

Both the Office and appellant have referred to an accepted 1997 work-related injury. There is no medical evidence in the record which provides a rationalized opinion as to a causal relationship between that injury and appellant's current condition. The evidence presented in appellant's 1997 claim is not part of the record in this case, in that this is not a claim for a

[5] *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

[6] *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[7] *James A. Long*, 40 ECAB 538, 541 (1989).

[8] *Dennis M. Mascarenas, supra* note 3 at 218.

[9] *See Solomon Polen, supra* note 4.

[10] *See Merton J. Sills, supra* note 6.

[11] *Dennis M. Mascarenas, supra* note 3 at 218.

recurrence of injury[12] but rather a claim for an injury of which appellant alleges he became aware on January 1, 2000.

The Office advised appellant that it was his responsibility to provide within 30 days, among other things, a comprehensive medical report from his treating physician which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition. Asserting that this request for information was "crucial" to consideration of his claim, the letter specifically advised appellant to secure an explanation from his physician as to how exposure or incidents in his federal employment contributed to his alleged condition. Appellant failed to submit any probative medical documentation in response to the Office's request, such as a narrative report from the doctor who treated him. There is no medical evidence in the record which addresses the issue of causal relationship. Therefore, the Office properly denied appellant's claim for benefits under the Act.

LEGAL PRECEDENT -- ISSUE 2

The Federal Employees' Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[13]

The application for reconsideration must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[14]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits.[15] Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[16]

[12] A recurrence of disability is defined by regulation at 20 C.F.R. § 10.5(x) as "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from previous injury of illness without an intervening injury or new exposure to the work environment that caused the illness."

[13] 20 C.F.R. § 10.605.

[14] 20 C.F.R. § 10.606.

[15] *Donna L. Shahin*, 55 ECAB ___ (Docket No. 02-1597, issued December 23, 2003).

[16] 20 C.F.R. § 10.608.

ANALYSIS -- ISSUE 2

The Office, by decision dated June 8, 2004, denied reconsideration of the December 2, 2003 decision on the grounds that appellant had provided evidence which was duplicative of evidence already in the case record and was therefore insufficient to warrant a merit review.

The Board finds that, although timely filed, appellant's January 21, 2004 application for reconsideration did not set forth new arguments or contain new evidence. Appellant merely resubmitted evidence previously of record and reiterated the procedural history of his claim. Appellant did not provide any argument or evidence that either showed that the Office erroneously applied or interpreted a specific point of law; advanced a relevant legal argument not previously considered by the Office; or constituted relevant and pertinent new evidence not previously considered by the Office.[17] Therefore, because appellant failed to meet at least one of these standards, the Office properly denied the application for reconsideration without reopening the case for a review on the merits.[18]

CONCLUSION

Appellant has failed to meet his burden of proof that his claimed medical condition is due to his employment as alleged, and the Office properly denied appellant's request for reconsideration.

[17] 20 C.F.R. § 10.606.

[18] 20 C.F.R. § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 8, 2004 and December 2, 2003 are hereby affirmed.

Issued: February 9, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member