United States Department of Labor
Employees' Compensation Appeals Board

K.H., Appellant	)	
and	)	**Docket No. 06-1065**
	)	**Issued: August 3, 2006**
DEPARTMENT OF THE AIR FORCE, HILL AIR FORCE BASE, UT, Employer	)	

Appearances:
K.H., 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

JURISDICTION

On April 3, 2006 appellant filed a timely appeal of decisions of the Office of Workers' Compensation Programs dated December 15, 2005 and February 17, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established a lower extremity injury causally related to factors of his federal employment; and (2) whether the Office properly refused to reopen the claim for merit review pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On September 2, 2005 appellant, then a 63-year-old aircraft repair inspector, filed an occupational claim for compensation (Form CA-2), alleging that he sustained numbness and tingling in his feet as a result of standing and walking in his federal employment. In an undated statement, he indicated that he had worked over 40 years on cement floors and his job required standing most of the day and some walking on stairs. He indicated that he began noticing tingling in his feet approximately three years earlier.

In a report dated July 14, 2005, Dr. Todd Flitton, a podiatrist, noted that appellant worked on his feet all day and prolonged standing aggravated his foot symptoms. He diagnosed neuralgia and recommended a lumbar magnetic resonance imaging (MRI) scan. In a report dated August 2, 2005, Dr. Christopher Penka, a neurosurgeon, provided results on examination and stated that an electromyogram (EMG) nerve conduction velocity test revealed evidence of bilateral peripheral neuropathy to the lower extremities. He stated that it was not clear whether spinal surgery would be of benefit to appellant.

By decision dated December 15, 2005, the Office denied the claim for compensation on the grounds that the evidence was insufficient to establish the claim. The Office did not discuss any specific medical reports.

Appellant requested reconsideration and submitted additional evidence. In a report dated October 20, 2005, Dr. Daniel Vine, a neurologist, provided a history and results on examination. He stated that appellant most likely had an idiopathic peripheral neuropathy, noting that, "during the course of the patient's career, he did have exposure to many different industrial chemicals as the result of his job. One wonders whether a cumulative toxic exposure might have contributed to the onset of this symmetrical lower extremity neuropathy."

In a report dated December 16, 2005, Dr. R. Robert Taylor, an internist, provided a history of progressive numbness and burning in the lower extremities. He stated that he believed appellant had an idiopathic peripheral neuropathy, although Dr. Taylor noted that he "had significant exposure to different industrial chemicals throughout his life on the job which could possibly contribute to the etiology of the peripheral neuropathy. This may also be related to standing on cement floors and still stands over a 40-year period of times [sic]. The percentage of damage is probably at least 50 percent and is not correctable."

By decision dated February 17, 2006, the Office determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim. The Office did not discuss any specific medical evidence.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of

[1] 5 U.S.C. §§ 8101-8193.

duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[2]

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying 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.[3]

ANALYSIS -- ISSUE 1

The medical evidence submitted prior to the December 15, 2005 Office decision does not contain a reasoned medical opinion on casual relationship between a diagnosed condition and federal employment. Dr. Flitton noted in his history that appellant worked on his feet and that he reported standing aggravated his foot symptoms, but he did not provide a reasoned medical opinion on causal relationship between the diagnosed neuralgia and federal employment. Dr. Penka indicated that diagnostic tests supported a diagnosis of peripheral neuropathy, but he did not discuss casual relationship with employment.

It is appellant's burden of proof to submit the evidence necessary to meet his burden of proof. The Board finds that he did not submit probative medical evidence prior to the December 15, 2005 decision sufficient to meet his burden of proof in this case.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
>
> (1) end, decrease or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."

[2] 20 C.F.R. § 10.115(e), (f) (2005); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

[3] *Victor J. Woodhams, supra* note 2.

The Office's implementing regulations provide that an employee may request reconsideration of an adverse Office decision and the request, along with supporting statements and evidence, is called the "application for reconsideration."[4] 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.[5] Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of these three requirements, the Office will deny the application for reconsideration without reviewing the merits of the claim. 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.[6]

ANALYSIS -- ISSUE 2

As the above standard indicates, evidence submitted with an application for reconsideration that is new and relevant is sufficient to reopen the case for merit review. The evidence does not have to be of sufficient probative value to establish the claim; it must only be new, relevant and pertinent to the issue. Dr. Taylor's December 16, 2005 report was a new report that was relevant to the issue of causal relationship. He stated that appellant's condition may be related to standing on cement floors, an opinion that is both new and clearly relevant to the issues in the case. Appellant had alleged that standing on cement floors contributed to his lower extremity condition and no prior opinion had been offered by a physician. In addition, both Dr. Taylor and Dr. Vine noted exposure to industrial chemicals as a possible cause of the diagnosed peripheral neuropathy. Again, the issue is not whether the evidence is sufficient to establish the claim, but whether it is new, relevant and pertinent evidence. On the issue of causal relationship with employment, appellant submitted new and relevant evidence.

The Board finds that appellant met a requirement of section 10.606(b)(2) and his claim should have been reopened for review of the merits pursuant to 5 U.S.C. § 8128(a) and the Office's implementing regulations. The case will be remanded to the Office for a merit decision.

CONCLUSION

Appellant did not meet his burden of proof to establish a lower extremity condition causally related to his federal employment. He did, however, submit new and relevant evidence on reconsideration and the case will be remanded for a merit decision.

[4] 20 C.F.R. § 10.605.

[5] 20 C.F.R. § 10.606(b)(2).

[6] *Eugene F. Butler*, 36 ECAB 393 (1984).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 15, 2005 is affirmed. The February 17, 2006 decision is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: August 3, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board