U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HERBERT BROWN, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland Heights, OH

Docket No. 97-939; Submitted on the Record;
Issued July 20, 2000

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant established that he sustained a recurrence of disability on July 19, 1995 causal relationship to his January 14, 1992 injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's case for merit review of his claim under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record and concludes that appellant has not met his burden of proof to establish that he sustained a recurrence of disability.

The Office accepted that on January 14, 1992 appellant, a letter carrier, sustained multiple contusions, left side and thoracic neck sprain while in the performance of duty. On July 25, 1995 appellant filed a notice of recurrence of disability alleging that he sustained a recurrence of disability on July 19, 1995 causally related to the January 14, 1992 employment injury. By letter dated August 9, 1995, the Office advised appellant that he needed to submit additional information regarding his claimed recurrence of disability including a detailed narrative medical report containing a well-rationalized medical opinion as to the relationship of his work-related injury and his present condition. On September 27, 1995 the Office denied appellant's claim, finding that appellant did not submit sufficient evidence to establish a recurrence of disability.

Appellant filed a request for reconsideration on October 10, 1995. The Office, in a decision dated January 9, 1996, denied modification of its prior decision.

In an undated letter received by the Office on May 13, 1996, appellant filed a request for reconsideration. On May 21, 1996 the Office denied modification of its prior decisions. Appellant again requested reconsideration in a letter received by the Office on July 3, 1996. The Office denied modification of its prior decisions on September 16, 1996. In an undated letter received by the Office on December 2, 1996, appellant requested reconsideration of his

recurrence of disability claim. The Office, in a nonmerit decision dated December 6, 1996, denied appellant's request for reconsideration.

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[1]

In support of his notice of recurrence of disability, appellant submitted a number of medical reports which indicate that appellant was treated for chronic back pain. In an August 25, 1995 medical report, Dr. James P. Bressi, appellant's treating osteopath, stated that appellant had an exacerbation of pain sometime after January 1995, "probably from exerting himself at work." However, this report does not contain a rationale on causal relation and thus is entitled to little probative value and is insufficient to establish causal relationship.[2]

In an October 31, 1995 medical report, Dr. Bressi stated that appellant initially injured his "cervical and thoracic spine as well as the low back" as a result of the January 14, 1992 fall. The Board notes that the Office did not accept a low back condition and thus this report is entitled to no probative value. The Board has long held that medical opinions which are based on an incomplete or inaccurate factual background are entitled to little probative value in establishing a claim for compensation.[3]

In a medical report dated April 24, 1996, Dr. Bressi stated that appellant sustained cervicalagia and lumbar radiculopathy which "stem from a work-related injury which occurred on January 14, 1992." He noted that because appellant did not have these symptoms prior to the injury, that "it is quite appropriate that this [injury was] the inciting event and this continues to be the event responsible for the symptomology." However, although Dr. Bressi stated that chronic pain "can, at times, be exacerbated for no apparent reason," he failed to explain what mechanism caused appellant's pain and how this mechanism was related to the work-related injury. This report is speculative in that it contains no rationalized medical opinion establishing a causal relationship between appellant's condition and his accepted injury and thus is of limited probative value.[4]

In a June 14, 1996 medical report, Dr. Bressi stated that the fact that appellant's lower back pain was not accepted initially by the Office was not medically conclusive that the back pain did not begin with that injury. He noted that chronic pain "may evolve … in a delayed

[1] *Lourdes Davila*, 45 ECAB 139 (1993).

[2] *Arlonia B. Taylor*, 44 ECAB 591 (1993).

[3] *Daniel J. Overfield*, 42 ECAB 718 (1991).

[4] *William S. Wright*, 45 ECAB 498 (1994).

fashion" and can result from "compensatory problems if somebody injures an extremity as such in the hip, or neck and their posturing becomes different." Dr. Bressi then stated that these factors "make this plausible that this pain in the low back did evolve, in fact, from the [work-related] injury." He noted that absent a prior injury, it is "very clear in my eyes that [the work-related injury] was the causative event." This report is also speculative in that it contains an opinion by Dr. Bressi without a supportive rationalized medical opinion associating appellant's pain with an objective medical finding caused by the January 14, 1992 work-related injury and thus it is of limited probative value.[5]

As appellant has not submitted any rationalized medical evidence which substantiate that his medical condition after July 19, 1995 is causally related to the accepted injuries, appellant has not met his burden of proof.

The Board further finds that the Office did not abuse its discretion pursuant to 5 U.S.C. § 8128(a) by refusing to reopen appellant's case for further consideration of the merits of his claim.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[6] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.[7] When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[8] However, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.[9]

In support of his request for reconsideration, appellant submitted an October 24, 1996 medical report from Dr. Bressi who stated that appellant sustained cervicalagia and lumbar radiculopathy as a result of a January 1992 accident and severe pain can be caused as a result of trauma even if x-rays, a magnetic resonance imaging scan or other tests are normal. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[10] Given the essential repetitive nature of Dr. Bressi's October 24, 1996 report with his April 24 and June 14, 1996 reports, which the

[5] *Id.*

[6] Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

[7] 20 C.F.R. § 10.138(b)(1)-(2).

[8] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

[9] *See Helen E. Tschantz*, 39 ECAB 1382 (1988).

[10] *Richard L. Ballard*, 44 ECAB 146 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

Office had reviewed previously, the Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

Inasmuch as appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a point of law or fact not previously considered by the Office or to submit relevant and pertinent evidence not previously considered by the Office, the Board finds that the Office did not abuse its discretion in refusing to reopen appellant's case for a merit review under section 8124(a) of the Act.

The decisions of the Office of Workers' Compensation Programs dated December 6, September 16 and May 21, 1996 are affirmed.[11]

Dated, Washington, D.C.
July 20, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[11] The Board notes that appellant submitted additional evidence subsequent to the Office's December 6, 1996 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).