

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT C. STANAWAY and DEPARTMENT OF AGRICULTURE,
U.S. FOREST SERVICE, Juneau, Alas.

*Docket No. 97-926; Submitted on the Record;
Issued December 28, 1998*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for a merit review.

This is the second appeal before the Board in this case. By decision and order issued August 25, 1995,¹ the Board affirmed as modified the Office's January 14, 1994 decision. The Board affirmed the termination of appellant's compensation benefits effective February 6, 1994 on the grounds that his work-related disability had ceased by that date. The Board also affirmed the Office's finding that appellant did not sustain alcoholism, pancreatic dysfunction, neuropathy and diabetes causally related to an accepted myocardial infarction, depression or other factors of his federal employment. The Board modified the Office's decision by finding that appellant was entitled to continuing medical benefits for his accepted depression condition. The law and facts of the case as set forth in the prior decision and order are incorporated by reference.

In an August 13, 1996 letter, appellant requested reconsideration of the Board's August 25, 1995 decision and order, asserting that the medical record established that he did manifest alcoholism, with consequential pancreatic dysfunction, diabetes and neuropathy, as a result of his accepted depression. Appellant asserted that the opinions of Drs. Michael Anderson and Douglas Shadle, attending psychiatrists, and Dr. David Derleth, an attending endocrinologist, established that his depression preceded his alcoholism and should be given great weight. He contended that the Office erred by relying instead on the opinion of Dr. George A. Henricksen, a Board-certified psychiatrist and second opinion physician. Appellant stated that perhaps he overemphasized to Dr. Henricksen that he had maintained sobriety for three-and-a-half years as of his February 16, 1993 examination. He noted that he continued to maintain his sobriety. Appellant acknowledged that prior to his 1992 myocardial infarction, he did abuse alcohol, but was not an alcoholic prior to his myocardial infarction and

¹ Docket No. 94-1171.

subsequent depression. He also asserted that he still experienced loss of equilibrium due to oxygen deprivation during the cardiac arrest which occurred during the May 5, 1993 Dobutamine stress test.

In support of his request for reconsideration, appellant submitted a July 17, 1996 report by Dr. Eugene M. Baker, a psychologist, who reiterated appellant's "position ... that the alcoholism and its sequelae were the result of his disabling conditions which were compensable. His disagreement about whether the alcoholism was preexisting has some support in the correspondence from Dr. Michael Anderson which is part of his record. A review of the entire file along with additional information which he can provide regarding his history might yield a different decision than" the Board's August 25, 1995 decision and order.²

By decision dated September 25, 1996, the Office denied appellant's request for a merit review on the grounds that the evidence submitted in support thereof was insufficient to warrant a merit review. The Office noted conducting a limited review of the file in order to assess the probative value of the evidence submitted. The Office found that appellant's August 13, 1996 letter did not "discuss any new point of law or establish any error by th[e] Office, nor does it present any new and relevant evidence." The Office also found that Dr. Baker's report did not contain a medical opinion, but merely reiterated appellant's ideas about the etiology of his alcoholism. The Office therefore found Dr. Baker's report to be of limited probative value, insufficient to warrant a merit review of the prior decision.

The Board finds that the Office did not abuse its discretion in denying appellant's request for a merit review.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.³ As appellant filed his appeal with the Board on December 24, 1996, the only decision properly before the Board is the September 25, 1996 decision denying appellant's request for a merit review.

To require the Office to open a case for reconsideration, section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides in relevant part that a claimant may obtain review of the merits of the claim by written request to the Office identifying the decision and the specific

² Appellant also submitted a December 28, 1995 letter to various elected representatives from Mr. Leonard Berg, a friend of appellant's. The letter does not contain new medical evidence, and there is no indication of record that Mr. Berg is a physician. As the critical issue in this case is the medical issue of causal relationship, Mr. Berg's letter is of no probative value as it does not constitute medical evidence. Also, the letter does not show that the Office erred in applying a point of law, advance a new point of law or fact not previously considered by the Office, or contain relevant and pertinent evidence not considered by the Office.

³ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

“(i) Showing that the Office erroneously applied or interpreted a point of law, or

“(ii) Advancing a point of law or fact not previously considered by the Office, or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”⁴

Section 10.328(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.⁵

In support of appellant’s August 13, 1996 request for a merit review, he submitted a July 17, 1996 report from Dr. Baker, an attending psychologist. The Board finds that this report does not constitute medical evidence, as it merely reiterates appellant’s previous contentions regarding the etiology of his alcoholism, and does not contain Dr. Baker’s own medical opinion. As the critical issue in this case is the medical issue of causal relationship, Dr. Baker’s report is not relevant as it does not constitute medical opinion evidence.

Additionally, the report and appellant’s August 13, 1996 letter, do not show that the Office erroneously applied or interpreted a point of law, or advance a point of law or fact not previously considered by the Office. The Board finds that the Office properly exercised its discretion in conducting a limited review of the evidence submitted, and afterward properly denied appellant’s August 13, 1996 request for a merit review.

⁴ 20 C.F.R. § 10.138(b)(1).

⁵ 20 C.F.R. § 10.138(b)(2).

The decision of the Office of Workers' Compensation Programs dated September 25, 1996 is hereby affirmed.

Dated, Washington, D.C.
December 28, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member