

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOUGLAS A. LANGSTON and DEPARTMENT OF THE NAVY,
CHARLESTON NAVAL SHIPYARD, Charleston, S.C.

*Docket No. 96-2374; Submitted on the Record;
Issued September 23, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office, in its June 28, 1996 decision, to reopen appellant's case for further consideration on the merits of his claim did not constitute an abuse of discretion.

On September 2, 1987 appellant, then a 44-year-old pipefitter, sustained fractured ribs, a right elbow laceration and right pneumothorax when he slipped on wet concrete and fell.

By letter dated July 27, 1994, appellant alleged that he sustained an emotional condition as a result of pain in his rib cage following his employment injury.

By decision dated March 27, 1995, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to demonstrate that he had sustained an emotional condition causally related to his September 2, 1987 employment injury.

By letter dated March 16, 1996, appellant requested reconsideration of the denial of his claim and submitted additional evidence.

In a report dated March 15, 1996, Dr. John A. Conforti, a chiropractor, provided a history of appellant's condition and stated his opinion that appellant's depression was due to his September 1987 employment injury.

By decision dated June 28, 1996, the Office denied appellant's request for further merit review of his claim.¹

The Board finds that the Office did not abuse its discretion in refusing to reopen appellant's case for further 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.² As appellant filed his appeal with the Board on July 25, 1996, the only decision properly before the Board is the Office's June 28, 1996 decision denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's March 27, 1995 decision in which the Office determined that appellant had failed to establish that he sustained an emotional condition in the performance of duty.³

In support of his request for reconsideration, appellant submitted a March 15, 1996 medical report from Dr. Conforti, a chiropractor, in which the physician stated his opinion that appellant had an emotional condition which was causally related to his September 1987 employment injury. Under section 8101(2) of the Federal Employees' Compensation Act, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.⁴ As Dr. Conforti's report addressed appellant's claimed emotional condition, not a subluxation, Dr. Conforti is not considered a physician under the Act and his report has no probative medical value on the issue of whether appellant sustained an employment-related injury.

¹ The Board notes that appellant submitted new medical evidence with his appeal. This evidence was not before the Office at the time it issued its June 28, 1996 decision and the Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

² 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

³ *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

⁴ 5 U.S.C. § 8107(a); *see Jack B. Wood*, 40 ECAB 95, 109 (1988).

The June 28, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
September 23, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member