

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATTI Z. WOODWARD and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Lexington, KY

*Docket No. 02-1144; Submitted on the Record;
Issued January 6, 2003*

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 in refusing to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

This is the second appeal in this case.¹ On the first appeal, the Board reviewed an August 17, 2000 decision, by which the Office terminated appellant's compensation benefits effective November 6, 1999. The Office specifically found that the weight of the medical evidence, represented by the opinion of the Office referral physicians, Dr. Robert L. Keisler, a Board-certified orthopedic surgeon, and Dr. Robert P. Granacher, a Board-certified psychiatrist, established that appellant had no longer suffered from either her accepted lumbosacral strain and subluxation or her accepted post-traumatic stress disorder (PTSD). By decision dated November 26, 2001, the Board found that, with respect to appellant's orthopedic conditions, the case was not in posture for decision due to an unresolved conflict in the medical opinion evidence. With respect to appellant's psychiatric condition, however, the Board affirmed the Office's determination that appellant's employment-related PTSD had ceased by November 6, 1999. As noted above, the Board found that the opinion of Dr. Granacher, who diagnosed preexisting nonemployment-related major depression, recurrent, with severe personality disorder, but no evidence of PTSD, outweighed the opinion of Dr. Rosa Riggs, appellant's treating physician, who diagnosed PTSD, chronic adjustment disorder, depression, anxiety, chronic back pain, fibromyalgia, chronic fatigue, lumbar disc disease and cognitive impairment, and indicated by check mark that these conditions were all related to appellant's employment. The complete facts of this case are set forth in the Board's November 26, 2001 decision and are herein incorporated by reference.

By letters dated January 31 and February 4, 2002, appellant submitted medical evidence and arguments to the Office pertaining to her psychiatric condition, and requested

¹ Docket No. 00-2712 (issued November 26, 2001).

reconsideration of the prior decision. In a decision dated March 28, 2002, the Office found the evidence and arguments submitted on reconsideration to be insufficient to warrant further merit review of appellant's claim.

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

The only decision before the Board in this appeal is the Office's decision dated March 28, 2002 denying appellant's application for review.²

Section 10.608(a) of the Code of Federal Regulations provides that 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 the standards described in section 10.606(b)(2).³ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.⁴ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁵

Subsequent to the Board's November 26, 2001 decision, appellant, through counsel, submitted a letter requesting reconsideration to the Office together with additional medical evidence. Counsel did not raise any new legal arguments, but rather reiterated his prior arguments before the Board regarding the relative weight he felt each medical opinion was entitled to and further asserted that the newly submitted evidence warranted further medical development by the Office.

In support of her request, appellant submitted Pain Care Center office notes from Dr. Templin dated May 5 and 30, June 27 and September 12, 2000 and May 22, 2001.

The Pain Care Center notes all contain the diagnoses of fibromyalgia, chronic low back pain syndrome, degenerative lumbar disc disease, chronic cervical pain syndrome, depression and anxiety. While these medical reports are new to the record, none of the Pain Care Center notes provides a diagnosis of PTSD, or otherwise discusses whether appellant continues to suffer from residuals of PTSD, the only psychiatric condition accepted in by the Office. Therefore, these reports are irrelevant to the issue in the case and the subject of appellant's reconsideration request, and, therefore, are insufficient to warrant further merit review. Similarly, appellant submitted the results of a psychological evaluation performed by Mark A. Etscheidt, a clinical

² 20 C.F.R. § 501.3(d)(2).

³ 20 C.F.R. § 10.608(a) (1999).

⁴ 20 C.F.R. § 10.608(b)(1) and (2) (1999).

⁵ 20 C.F.R. § 10.608(b) (1999).

psychologist. While Dr. Etscheidt stated that appellant had considerable difficulty coping with chronic pain, was preoccupied with her health problems and had moderate symptoms of depression and anxiety, he did not diagnose PTSD or discuss whether appellant continues to suffer from residuals of PTSD. Therefore, his report is also insufficient to warrant merit review.⁶

Finally, appellant submitted a report dated December 9, 1999 from Dr. David Shraberg, a Board-certified psychiatrist. In his report, Dr. Shraberg diagnosed generalized anxiety disorder with marked dysthmic and somatic features and chronic lumbosacral strain/sprain with secondary somatization, and stated that her prominent symptoms of depression, anxiety and somatization are part of her original injury and psychological trauma of August 5, 1988. With respect to whether appellant continues to suffer from PTSD, Dr. Shraberg stated:

“Although certainly there are elements of post-traumatic stress disorder in the period of employment that culminated in her leaving the Veterans Administration Hospital, post-traumatic stress disorder would be something of a difficult extrapolation at this time. However, it should be noted that post-traumatic stress disorder in DSM-IV is a diagnosis that is rather all inclusive and certainly could not be totally ruled out. I would certainly defer to Dr. Riggs who has been her treating physician for 10 years regarding this diagnosis.... Unquestionably her retirement process through the Veterans Administration Hospital was traumatic. This certainly precipitated an acute traumatic stress reaction. This has evolved into a chronic dysthmic disorder with generalized anxiety features and certainly could be subsumed under post-traumatic stress disorder, although her desire to return to nursing if she could as well as her overall functioning, militates against such a disabling diagnosis.”

While Dr. Shraberg clearly opines that appellant’s current psychological conditions are causally related to her employment, the submission of Dr. Shraberg’s report would not be sufficient to require reopening of appellant’s claim in that he does not provide a clear opinion that appellant continues to suffer from the PTSD, the only psychiatric condition accepted by the Office.⁷

As all of the evidence submitted by appellant failed to clearly address the relevant issue, and as appellant failed to raise substantive legal questions, the Office did not abuse its discretion by refusing to reopen appellant’s claim for review of the merits.

⁶ *Id.*

⁷ *Linda I. Sprague*, 48 ECAB 386 (1997).

The decision of the Office of Workers' Compensation Programs dated March 28, 2002 is hereby affirmed.

Dated, Washington, DC
January 6, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member