

FACTUAL HISTORY

This case has previously been before the Board on three occasions. The facts, history and discussion contained in the prior appeals are incorporated by reference. The Office accepted appellant's claim for an August 2, 1991 traumatic injury for lumbar strain and a bulging disc at L4-5 and began payment of temporary total disability compensation. On September 2, 1998 the Board affirmed the April 17, 1996 Office decision which reduced his compensation to zero on the grounds that appellant did not cooperate in vocational rehabilitation efforts, finding that such efforts would have resulted in a return to work with no loss of wage-earning capacity.¹ On October 21, 1998 appellant agreed to cooperate with vocational rehabilitation efforts and his compensation was reinstated. On April 14, 1999 the Office determined that the medical evidence submitted from the Department of Veterans Affairs (VA) established that he had a psychological condition which prevented him from working; therefore, rehabilitation efforts were discontinued. By decision dated December 20, 2001, the Board affirmed a January 5, 2000 Office decision which found that there was no medical evidence in the record to establish that appellant underwent medical treatment during the period January 29 through April 1996 for a psychological condition which prevented him from cooperating with vocational rehabilitation.² In a decision dated April 23, 2004, the Board affirmed a September 13, 2002 Office decision, finding that the Office properly reduced appellant's compensation to zero as he refused to cooperate with vocational rehabilitation efforts and properly denied his claim for a consequential emotional condition.³

On September 3, 2004 appellant requested that the Office reconsider his case. He submitted an April 19, 2004 decision by the VA, granting special monthly compensation based on aid and attendance criteria from December 13, 2000. Appellant also submitted a September 19, 2002 medical report by Dr. Martin Kata, a Board-certified internist, who concluded that appellant's emotional conditions were aggravated by chronic low back pain and physical therapy. He resubmitted a July 31, 1998 report by Dr. Arnold Negrin, a psychiatrist, and a progress note dated February 6, 1998 by Estrellita C. Mitchell. Appellant also submitted progress notes with regard to his emotional condition from 2004 which indicate that he was taking Percocet and morphine and attending a post-traumatic stress disorder group. He also submitted correspondence regarding his August 15, 2003 health insurance cancellation request. Appellant submitted articles concerning the relationship of chronic low back pain and post-traumatic stress disorder.

By decision dated February 17, 2005, the Office denied modification after reviewing the merits.

By letter dated March 6, 2005, appellant requested reconsideration and submitted an October 22, 1996 medical report from Dr. William Noriega Murcia, a statement indicating the dates of appointments with appellant from March 15 to June 3, 1996, progress notes dated

¹ Docket No. 97-242 (issued September 2, 1998).

² Docket No. 00-1168 (issued December 20, 2001).

³ Docket No. 03-80 (issued April 23, 2004), *petition for recon. denied* (issued August 5, 2004).

August 9 and December 23, 1999 by Dr. Cynthia A. Gerrard, a clinical psychologist, and a report of the August 2, 1991 accident. He also submitted a November 8, 1997 report by Daniel E. Hendricks, Ph.D, who stated, "Without baseline data of psychological functioning, it is difficult to differentiate between malingering, exaggeration and emerging symptoms. In a December 7, 2000 decision, the VA found a service connection with regard to appellant's post-traumatic stress disorder and granted 30 percent disability effective March 27, 1998. He also submitted an August 9, 1995 rating decision from the VA with regard to post-traumatic stress disorder, hypertension flatfoot, irritable bowel syndrome and hemorrhoids.

By decision dated June 10, 2005, the Office denied appellant's request for reconsideration without reviewing the case on the merits.

LEGAL PRECEDENT -- ISSUE 1

Under section 10.519 of the regulations,⁴ the Office has the power to reduce an employee's compensation for failure to cooperate with vocational rehabilitation. Under section 10.519(a), the Office can select a suitable job for the employee and reduce his compensation based on the amount he would earn for that position when compared to the current wage of his former position. Under section 10.519(a), the Office can select a suitable job for the employee and reduce his compensation based on the amount he would earn for that position when compared to the current wage of his former position. Under section 10.519(c), where an employee has not cooperated with the early stages of vocational rehabilitation and a position cannot be identified, the Office has the authority to presume that vocational rehabilitation would have resulted in a return to work with no loss of wage-earning capacity and thereby reduce appellant's compensation to zero. Under both provisions, the reduction remains in effect until the employee acts in good faith to comply with the direction of the Office.

ANALYSIS -- ISSUE 1

In order to warrant modification of the prior 1996 sanction decision, appellant must establish by rationalized medical evidence his inability to participate in vocational rehabilitation efforts from January 29 through April 17, 1996. None of the evidence submitted on reconsideration indicates that this decision should be changed. The Board previously reviewed the July 31, 1998 report by Dr. Negrin and the February 6, 1998 report by Ms. Mitchell and concluded that these reports were insufficient to establish appellant's inability to cooperate with vocational rehabilitation efforts from January 29 to April 17, 1996. The VA decision of April 19, 2004 does not address the current issue. Moreover, decisions by other administrative agencies are not dispositive of proceedings under the Federal Employees' Compensation Act, which is administered by the Office and under Board review, where such findings are made pursuant to different standards of proof.⁵ The September 19, 2002 report by Dr. Kata does not address the issue of whether appellant was disabled during the relevant time period, *i.e.*, January 29 through April 1996. Similarly, the correspondence regarding cancellation of

⁴ 20 C.F.R. § 10.519.

⁵ *Michael A. Deas*, 53 ECAB ____ (Docket No. 00-1090, issued November 14, 2001); *Wayne E. Boyd*, 49 ECAB 102 (1997).

appellant's health insurance is not relevant to this issue. Appellant submitted articles concerning the relationship of chronic low back pain and post-traumatic stress disorder. However, such articles are of general application and are not relevant to the specific issue in this case, whether he was unable to cooperate with vocation rehabilitation from January 29 through April 1996.⁶ Accordingly, the Office properly determined that he had not established good cause for failing to cooperate with vocational rehabilitation efforts during the relative time period.

LEGAL PRECEDENT -- ISSUE 2

An employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.⁷ This burden includes submission of a detailed description of the employment conditions or factors which the employee believes caused or adversely affected his condition for which he or she claims compensation.⁸ This burden also includes the submission of rationalized medical opinion evidence, based upon a complete and accurate factual and medical background of the employee, showing a causal relationship between the condition for which compensation is claimed and the implicated factors or conditions of his federal employment.⁹

Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion. On the other hand, disability which results from an emotion reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.¹⁰

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.¹¹

ANALYSIS -- ISSUE 2

The Board finds that there is no medical evidence that attributes appellant's emotional condition to his accepted injury of August 2, 1991. For the reasons noted, the decision by the VA, the reports of Dr. Negrin and Ms. Mitchell, the correspondence with regard to his health insurance and the health articles are not relevant to this issue. Although the report of Dr. Kata indicated that appellant's emotional conditions were aggravated by chronic low pack pain, he did

⁶ *William C Bush*, 40 ECAB 1064 (1989).

⁷ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁸ *See generally*, 20 C.F.R. § 10.115-116 (1999).

⁹ *See Ruth C. Borden*, 43 ECAB 146 (1991).

¹⁰ *Lillian Cutler*, 28 ECAB 125 (1976).

¹¹ *See Charles Garrett Smith*, 47 ECAB 562 (1996).

not relate this to the accepted injury of August 2, 1991. Accordingly, the medical evidence does not relate appellant's accepted injury to his emotional condition. The Office properly found that appellant had not established a consequential emotional condition.

LEGAL PRECEDENT -- ISSUE 3

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, 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.¹²

ANALYSIS -- ISSUE 3

Appellant does not make any argument that the Office erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by the Office. On reconsideration appellant submitted a copy of the August 2, 1991 report of accident, reports by Dr. Murcia, reports by Dr. Gerrard, a December 7, 2000 VA rating decision and a statement by himself dated January 21, 2002. Evidence that is repetitious or duplicative of evidence already in the case record does not constitute a basis for reopening a claim.¹³ As noted, decisions by other agencies, such as the VA, are not relevant to claims before the Office, as the findings and conclusions are based on different legal standards.¹⁴ The report by Dr. Hendricks does not relate appellant's emotional condition to his accepted injury. Accordingly, the Board finds that he did not show that the Office erroneously applied or interpreted a specific point of law, did not raise any substantive legal questions and failed to submit any relevant and pertinent new evidence not previously reviewed by the Office.

CONCLUSION

The Board finds that the Office properly affirmed its decision dated February 17, 2005, wherein the Office determined that appellant had not demonstrated good cause of noncompliance with vocational rehabilitation efforts and reduced his compensation to zero and also properly denied that he had a consequential emotional condition. The Board also finds that the Office properly denied appellant's request for reconsideration of the merits of his claim.

¹² 20 C.F.R. § 10.606(b)(2)(i-iii).

¹³ *Shirley Rhynes*, 55 ECAB ____ (Docket No. 04-1299), issued September 9, 2004.

¹⁴ See *William C. Bush supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 10 and February 17, 2005 are affirmed.

Issued: January 4, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board