United States Department of Labor
Employees' Compensation Appeals Board

H.B., Appellant	)	
and	)	**Docket No. 07-1417**
	)	**Issued: October 16, 2007**
DEPARTMENT OF JUSTICE, IMMIGRATION & NATURALIZATION SERVICE, Miami, FL, Employer	)	

Appearances:
Lawrence Berger, Esq. and Georgia Deplas, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 27, 2007 appellant filed a timely appeal from a February 13, 2007 nonmerit decision of the Office of Workers' Compensation Programs denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this decision. Because more than one year has elapsed between the last merit decision, dated January 31, 2006 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim.[1]

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

[1] 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. *See Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. § 501.3(d)(2).

FACTUAL HISTORY

This is the second time this case has been before the Board on appeal. In an order issued January 3, 2005, the Board reversed the Office's July 23, 2004 decision denying appellant's request for an oral hearing as untimely.[2]

On August 27, 2003 appellant, then a 50-year-old immigration inspector, filed a traumatic injury claim alleging that he bumped his head on the inside corner of his booth, after bending to pick up a piece of paper that had fallen from a passport. He stated that, although he felt dizzy, he continued working. Later, appellant had a seizure.

Appellant submitted emergency department records dated July 21, 2003 from Cedars Medical Center. Dr. Pedro Cardich, a Board-certified internist, stated that appellant was brought into the emergency department after experiencing an apparent seizure during his sleep. His notes indicated that, while at work the day before, appellant had experienced some paresthesias, numbness associated with a tingling sensation in his right upper extremity. Dr. Francis N. Crespo, a Board-certified cardiologist, diagnosed new onset seizure.

Appellant submitted a September 2, 2003 witness statement from George Caraccioli, II, coworker, who indicated that on July 20, 2003, while conducting inspections, he heard appellant accidentally hit his head against the primary inspection desk, as he returned to a standing position after picking up a document that had fallen to the floor. At the time of the alleged incident, Mr. Caraccioli was in the booth beside appellant and was allegedly able to hear his head make contact with the wood. He stated that appellant later appeared red-faced and fatigued.

The record contains work excuses from Dr. Cardich from August 6 to 13, 2003 and a July 24, 2003 cardiac catheterization report. Appellant submitted an August 8, 2003 authorization for medical treatment, wherein he provided a description of his alleged July 20, 2003 injury. He indicated that he had hit his head on the edge of a counter, after picking up a paper from the floor and that he later had a seizure.

On January 15, 2004 appellant filed a claim for a recurrence of disability as of December 20, 2003, when he allegedly had a second seizure. He submitted reports from Dr. Cardich dated December 20, 2003, January 19 and 22 and February 25, 2004. On December 20, 2003 Dr. Cardich indicated that appellant had been brought into the emergency room on that date after experiencing a seizure. He noted that appellant had been seen on July 21, 2003 "when he apparently presented an event following a trauma to his head." Dr. Cardich provided diagnoses of seizure disorder and status post-head trauma. In a January 19, 2004 follow-up report, he noted that appellant was experiencing painful sensations in the area of the trauma he sustained. Dr. Cardich stated: "[that] these difficulties could be related to his traumatic brain event." In a January 22, 2004 attending physician's report, he stated that the date of his first examination of appellant was December 20, 2003. Dr. Cardich diagnosed seizure disorder and traumatic brain injury and indicated that his condition "could have been triggered by head trauma sustained at work." On February 25, 2004 he indicated that appellant felt pain and a sensation of pressure in the left hemisphere, where he sustained the trauma after falling.

[2] Docket No. 04-2030 (issued January 3, 2005).

On December 20, 2003 Dr. Juan R. Del Rio, a Board-certified nephrologist, provided a diagnosis of seizure disorder. In an undated report, Dr. Tony Abassi, a treating physician, diagnosed new onset seizure disorder, headache and obesity. The record contains a February 25, 2004 work excuses from Dr. Cardich; a July 21, 2003 report of an electroencephalography; a December 20, 2003 report of a computerized tomography scan of the brain; a September 4, 2003 case status sheet; and an attorney authorization letter dated April 23, 2004, appointing Antonio Lozada, union vice president, as his authorized representative. In a statement dated February 25, 2004, appellant indicated that he had not filed an injury report because he believed that his headache was merely the beginning of the flu; that he had not noticed any blood or other "outside injury;" and that he was still able to perform his work after the alleged incident. He stated that, after he bumped his head on July 20, 2003, he experienced mild clumsiness and dizziness; a mild tingling sensation in his hands; mild heaviness; and a heavy headache sensation. Later that night, appellant felt pressure in his head.

The Office forwarded the case file to the district medical director for review and an opinion as to whether appellant's alleged July 20, 2003 head injury was causally related to his seizures. On May 11, 2004 a district medical adviser opined that the record did not reflect that appellant suffered head trauma prior to his first seizure on July 20, 2003. He noted that appellant had been suffering right arm numbness and parasthesias and right-sided headaches, prior to the seizure. The district medical adviser's electroencephalogram and magnetic resonance imaging scan were both negative. He concluded that the record did not establish a causal relationship between head trauma and seizures.

By decision dated May 12, 2004, the Office denied appellant's claim. The Office found that the medical evidence did not demonstrate that his claimed medical condition was related to the established work event.

On June 11, 2004 appellant requested an oral hearing, contending that he had established a causal relationship between his July 20, 2003 traumatic injury and his diagnosed seizure condition. By decision dated July 23, 2004, the Office denied appellant's request as untimely. By order dated January 3, 2005, the Board reversed the Office's July 23, 2004 decision and remanded the case to the Office for an oral hearing.[3]

By agreement of appellant and the hearing representative, in lieu of an oral hearing, a telephone hearing was conducted on November 10, 2005. Appellant reiterated the history of his alleged injury, indicating that he had experienced headaches in the days prior to the July 20, 2003 incident. He stated that he had never had seizures prior to the injury. Appellant indicated that he had informed his physicians at the time of his first hospitalization that he had bumped his head on July 20, 2003, prior to his first seizure.

Subsequent to the hearing, appellant submitted a letter dated May 28, 2004 requesting assistance from the union; letters dated June 20 and September 16, 2005 asking the Board to enforce its January 3, 2005 order; an undated letter from Dr. Martin Dones, a Board-certified internist, who stated that, based upon his review of the medical evidence, "the only reasonable conclusion is that [appellant] is suffering from seizure disorder related to the incident of July 20,

[3] *Id.*

2003;" an August 21, 2003 report, bearing an illegible signature, reflecting a diagnosis of new onset seizure; reports dated July 21 and December 20, 2003 from the City of Miami Fire and Rescue; a May 28, 2004 memorandum to all employees from the employing establishment, indicating that appellant was out for several weeks due to medical treatment for a seizure disorder and traumatic brain injury; an undated request for administrative leave to prepare for his hearing; and the Federal Employees' Compensation Act, Program Memorandum No. 203, dated December 22, 1975, on the issue of causal relationship. Appellant submitted a statement dated August 3, 2003, relating the alleged events of July 20, 2003, stating that, on the date in question, he "was feeling dizzy and rare because of a hit in [his] head bending over to look for an I-SS1 that fell to the floor from a passport." He stated that he had a seizure after he went to bed later that night. Appellant submitted statements dated January 3, October 10, November 14 and December 10, 2005, reiterating his belief that his condition was causally related to the alleged July 20, 2003 incident and alleging abuse of discretion on the part of the Office.

Appellant submitted statements from family and coworkers who observed him at times following the alleged July 20, 2003 incident, including: a February 20, 2004 statement from Carlos Rodriguez; a May 17, 2004 statement from appellant's parents; a May 11, 2004 statement from Edwin Justiniano, a neighbor; an August 6, 2003 statement from Mr. Lozada; a May 23, 2005 statement from R. Landau; a June 3, 2005 statement from Hugo L. Roche; and a March 16, 2005 statement from Alfonso A. Rodriguez.

Medical reports from Dr. Abassi dated August 11, 2003 reflected a diagnosis of syncopal episodes and noted appellant's report of bumping his head on a counter on July 20, 2003. In an emergency room report dated December 20, 2003, Dr. Del Rio diagnosed new onset seizure. His notations included: "head trauma at work July 2003 and possibly had seizure."

In a June 11, 2004 statement, Dr. Cardich indicated that, during his July 2003 hospital admission, appellant informed him that he had sustained a head trauma at work a few hours prior to being admitted. He stated: "It is reasonable probable (sic) that [appellant] has a post-traumatic seizure disorder secondary to that incident."

In a report dated October 19, 2005, Dr. Carlos A. Zubillaga, a Board-certified neurologist, opined that appellant's seizures were caused by a head injury suffered on July 20, 2003, given that there was "absolutely no history of any events of the same nature prior to the head injury and all prior evaluations have failed to show any other reason." He stated that he had reviewed the medical records from appellant's hospital admission on July 21, 2003, as well as the second admission on December 20, 2003. Dr. Zubillaga noted that the records had "wrongfully omitted that [appellant] had suffered a head injury at work on July 20, 2003, which was the cause of his seizures."

By decision dated January 31, 2006, the hearing representative affirmed and modified the Office's May 12, 2004 decision. Noting inconsistencies in the evidence, the representative found that neither the factual nor medical evidence of record contemporaneous to the alleged July 20, 2003 incident, established that appellant sustained a head injury as alleged.

On January 9, 2007 Georgia Deplas, Esquire requested reconsideration of the January 31, 2006 decision on behalf of appellant, contending that the fact of injury had been established by

the evidence of record.[4] Ms. Deplas argued that the inconsistencies in the record were not the fault of appellant and that, using proper analysis, only one conclusion could be reached in this case, namely that he suffers from post-traumatic seizure disorder which is causally related to his on-the-job injury.

In support of his reconsideration request, appellant submitted copies of the hearing representative's January 31, 2006 decision and the Office's May 12, 2004 decision, as well as duplicates of previously submitted documents, including: a copy of the district medical adviser's May 11, 2004 report; a copy of the August 8, 2003 authorization for medical treatment; a copy of the September 2, 2003 witness statement from Mr. Caraccioli; and a copy of the September 4, 2003 case status sheet.

By decision dated February 13, 2007, the Office denied appellant's request for reconsideration, finding the evidence submitted to be cumulative and duplicative and, therefore, insufficient to warrant merit review.

LEGAL PRECEDENT

Under section 8128(a) of the Act,[5] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[6] which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, which sets forth arguments and contains evidence that:

> "(1) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
>
> "(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]."

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[7]

[4] The Board notes that Ms. Deplas was not appellant's authorized representative at the time the reconsideration request was made.

[5] 5 U.S.C. § 8128(a).

[6] 20 C.F.R. § 10.606(b).

[7] *Id.*

Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review.[8]

ANALYSIS

The Office accepted Ms. Deplas' January 9, 2007 letter as a timely request for reconsideration. However, the request neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument not previously considered by the Office. Ms. Deplas merely reiterated appellant's contention that the fact of injury had been established by the evidence of record. Consequently, appellant is not entitled to a review of the merits of his claim, based on the first and second above-noted requirements under section 10.606(b)(2).

In support of his request for reconsideration, appellant submitted copies of documents previously received and considered by the Office. As the documents are duplicative, they do not constitute new evidence not previously considered by the Office.[9] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review under the third requirement under section 10.606(b)(2).

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his request for reconsideration.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

[8] *Denis M. Dupor*, 51 ECAB 482 (2000).

[9] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the February 13, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 16, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board