

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRIAN MORRIS and DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT, Reno, Nev.

*Docket No. 97-131; Submitted on the Record;
Issued August 19, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant had any disability after February 3, 1995, the date the Office of Workers' Compensation Programs terminated his compensation benefits, causally related to his November 15, 1984 accepted low back soft tissue muscular strain and right hip contusion injuries.

The Board finds that the decision of the Office's hearing representative dated September 28, 1995 is in accordance with the facts and law of the case and hereby adopts the hearing representative's findings and conclusions.¹

Following the hearing representative's decision on April 29, 1996 appellant requested reconsideration. In support of his request, appellant submitted several new medical reports. A November 17, 1995 prescription discusses appellant's eye examination results and recommends that he avoid driving at night. As this does not address whether appellant remains disabled due to the accepted low back soft tissue strain, it is not relevant. A February 7, 1996 report from Dr. Terence J. Parr, a family practitioner, noted that appellant had a history of chronic and consistent low back pain, that he could neither sit nor stand for more than two hours at a time, and that he had mitral valve insufficiency and should be considered disabled. This report merely repeats the contents of medical reports previously submitted and considered, does not relate appellant's chronic and consistent low back pain to the accepted condition of low back soft tissue muscle strain and relates appellant's disability to his impaired cardiac status. Consequently, this report is not probative as to whether appellant remains disabled due to low back soft tissue strain sustained on November 15, 1984. A February 22, 1996 report from Dr. John S. Williamson, a Board-certified cardiologist, discussed appellant's need for a mitral valve replacement. This report does not address and is also not relevant to the issue in question.

¹ Appellant sustained injury on November 15, 1984 accepted for a low back strain and right hip contusion. A March 8, 1985 computerized tomography (CT) scan was reported as within normal limits with no herniated disc material identified.

An April 4, 1996 report from Dr. Karl C. Wenner, a Board-certified orthopedic surgeon, stated that it was certainly conceivable that appellant sustained thoracolumbar injury at the time of his original accident which led to degenerative changes at this level. Dr. Wenner did not address appellant's degenerative thoracolumbar changes as being related to the accepted conditions of low back muscular soft tissue strain or right hip contusion, and hence this report is not probative on that issue, and therefore is not relevant.

By decision dated July 24, 1996, the Office denied appellant's request for a reopening of his case for a review on its merits under 5 U.S.C. § 8128(a). The Office found that the evidence submitted in support of the request was cumulative, irrelevant and immaterial, and was not sufficient to warrant a review on its merits.

The Board finds that the Office did not abuse its discretion in refusing to reopen appellant's case for a further review on its merits.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above-mentioned standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁵

In support of appellant's reconsideration request he submitted medical reports which did not address whether he remained disabled due to his accepted employment conditions of low back soft tissue strain or right hip contusion. Two reports found that he was disabled because of his compromised cardiac status, one note addressed eye problems, and one report speculated that he might have sustained further injury in 1984 not accepted by the Office, which might be causative his current degenerative spinal changes. As this last report addressed a condition not accepted by the Office, any current disability stemming from such condition would not now be compensable. Hence, this report was not probative on the issue of continuing employment-related disability.

Consequently, appellant has not established that the Office abused its discretion in its July 24, 1996 decision by denying his request for a review on the merits of its September 28, 1995 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, failed to advanced a point of law or a fact not

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.138(b)(1), 10.138(b)(2).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Joseph W. Baxter*, 36 ECAB 228 (1984).

previously considered by the Office or failed to submitted relevant and pertinent evidence not previously considered by the Office.

As the only limitation on the Office's authority is reasonableness, an abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.⁶ Appellant has made no such showing here.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁷ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁸ In the instant case, the Office met that burden through the well-rationalized second opinion evaluation of Dr. Sims, particularly since appellant had not presented any rationalized medical evidence supporting that he had continuing disability causally related to his accepted low back soft tissue strain injury or his right hip contusion injury.

It is not enough merely to show that appellant is disabled; it must be shown that his current disability is causally related to the accepted employment conditions of low back soft tissue strain or right hip contusion, and the relationship be fully explained. Such evidence was not presented here.

⁶ *Daniel J. Perea*, 42 ECAB 214 (1990).

⁷ *Harold S. McGough*, 36 ECAB 332 (1984); see Federal (FECA) Procedure Manual, Chapter 2.812.3 (March 1987).

⁸ See *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

Consequently, the decisions of the Office of Workers' Compensation Programs dated July 24, 1996 and September 28, 1995 are hereby affirmed.

Dated, Washington, D.C.
August 19, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member