

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of DENNIS L. SMOCK and DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT, Ely, Nev.

*Docket No. 96-1553; Submitted on the Record;  
Issued July 14, 1998*

---

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective November 13, 1994 on the grounds that he had no residuals of his accepted employment injury of tarsal tunnel syndrome; and (2) whether the Office's denial of appellant's request for reconsideration pursuant to section 8128(a) of the Federal Employees' Compensation Act constituted an abuse of discretion.

On June 13, 1990 appellant, then a 44-year-old engineering equipment operator, filed a claim, alleging that on June 11, 1990, he injured his right ankle. On June 14, 1990 appellant resigned from his job. On October 1, 1990 the Office accepted appellant's claim for tarsal tunnel syndrome of the right ankle.<sup>1</sup> On November 15, 1990 appellant underwent tarsal tunnel syndrome release surgery, and on July 18, 1991, this surgery was repeated. On December 21, 1990 the Office began payment of compensation for temporary total disability.

In a letter dated September 29, 1994, the Office proposed termination of appellant's compensation on the grounds that the weight of the medical evidence did not establish that he had any residual disability or medical condition related to his employment injury of June 1990. By decision dated November 2, 1994, the Office terminated appellant's compensation effective November 13, 1994 on the grounds that the medical report by Drs. George Bagby, a Board-certified orthopedic surgeon, W. Frank Emmons, a Board-certified neurosurgeon, and Charles Wolfe, a Board-certified internist specializing in toxicology, constituted the weight of the medical evidence and did not support a finding of continued disability or a residual injury causally related to appellant's employment injury. In a decision dated August 29, 1995, an Office hearing representative affirmed the decision of the Office dated August 29, 1995. In a decisions dated February 5 and June 5, 1996, the Office denied appellant's requests for

---

<sup>1</sup> The Office had previously accepted claims by appellant for spurs in his right ankle in 1981 and 1983. The Office also accepted a claim for a right shoulder sprain in 1986.

reconsideration on the grounds that the evidence submitted was cumulative in nature and not sufficient to warrant reopening the case for merit review.

The Board has carefully reviewed the case record and finds that the Office properly terminated appellant's compensation effective November 13, 1994.

Under the Federal Employees' Compensation Act,<sup>2</sup> once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.<sup>3</sup> After the Office determines that an employee has a disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.<sup>4</sup>

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.<sup>5</sup> Therefore, the Office must establish that appellant's condition was no longer aggravated by employment factors after November 13, 1994, and the Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

In this case, the Office initially proposed termination based on the report of Drs. Bagby, Emmons and Wolfe, Office referral physicians. Appellant had been examined by Dr. Kenneth H.Z. Isaacs, Board-certified neurologist, for difficulty and weakness in his legs and a loss of sensation. In a report dated January 4, 1993, Dr. Isaacs diagnosed peripheral neuropathy severe, subacute, motor greater than sensory, of approximately three months in progression. He found clinical features supportive of primary motor neuropathy and noted that appellant had electrophysiological evidence of multifocal demyelinating polyneuropathy though there might be some axonal component as well. Dr. Isaacs concluded that appellant might have chronic inflammatory demyelinating polyneuropathy with an unclear onset and that the etiology of this condition was unclear although it was possible this condition was not related to a simple compression. He reported that appellant had a history of gasoline intoxication, which he currently denied, that could result in peripheral neuropathy or encephalopathy but indicated that with the current denial, the etiology was of an auto-immune or infectious related disorder. Dr. Isaacs continued to treat appellant through May 1993.

In the collective May 11, 1994 report of Drs. Bagby, Emmons and Wolfe, they diagnosed general neuropathy of the arms, legs, hands and feet that started in the right ankle and was now

---

<sup>2</sup> 5 U.S.C. § 8101 *et seq.* (1974).

<sup>3</sup> *William Kandel*, 43 ECAB 1011 (1992).

<sup>4</sup> *Carl D. Johnson*, 46 ECAB 804 (1995).

<sup>5</sup> *Dawn Sweazey*, 44 ECAB 824 (1993).

<sup>6</sup> *Mary Lou Barragy*, 46 ECAB 781 (1995).

also in both knees, hips, arms and hands. They indicated that appellant's tarsal tunnel syndrome of the right ankle was resolved and noted residual tenderness surrounding the surgical incision which was not disabling. The physicians reported that appellant's tarsal tunnel syndrome was the first manifestation of his neuropathy as verified by his lack of surgical success. They noted that despite appellant's complaints of continued discomfort, there was no objective numbness, weakness or loss of motion in the ankle. Drs. Bagby, Emmons and Wolfe concluded that appellant's current condition was due to general neuropathy, was not related to his 1990 industrial incident and did not require any further treatment. Dr. Kenneth German, a Board-certified orthopedic surgeon and appellant's treating physician, initially concurred with report by Drs. Bagby, Emmons and Wolfe. However, he subsequently submitted a letter dated September 27, 1994 in which he indicated that he did not agree with the report as appellant had tarsal tunnel syndrome at the time surgery was performed. This letter is not sufficient to overcome the well-reasoned and rationalized report by the medical panel of Office referral physicians. Although Dr. German reiterated his conclusion that appellant had sustained tarsal tunnel syndrome at the time of the injury, the physician does not address whether appellant has any current residual disability or medical condition related to that employment injury. Therefore, his opinion is not sufficient to either overcome the well-reasoned opinions of the medical panel or to warrant further development of the evidence by the Office as this is not an opinion that causes a conflict in the medical evidence. Consequently, the medical report by Drs. Bagby, Emmons and Wolfe constitutes the weight of the medical evidence and the Office has met its burden of proof in establishing that appellant's employment related disability had ceased effective November 13, 1994.

The Board also finds that the Office properly denied appellant's request for reconsideration.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>7</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>8</sup> Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>9</sup>

On reconsideration appellant submitted additional medical reports by Dr. German dated September 18 and December 4, 1995 and March 1, 1996. In his September 1995 report, Dr. German noted that appellant was seeking answers to the question of what caused his polyneuropathy and whether it was due to a delay in the treatment of his tarsal tunnel syndrome.

---

<sup>7</sup> 20 C.F.R. § 10.138(b)(2).

<sup>8</sup> *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

<sup>9</sup> *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

Dr. German noted that the lack of improvement of appellant's tarsal tunnel syndrome after surgery was not uncommon and that whether the appellant improved depended on a number of factors, such as his exposure to chemicals and the development of diabetes. The physician then reiterated that appellant had tarsal tunnel syndrome at the time of the surgery. The report dated December 4, 1995 is substantially the same as the September 1995 report. In the report dated March 1, 1996, Dr. German indicated that appellant's tarsal tunnel syndrome was work-related and that a sprain of appellant's ankle was the inciting cause of his tarsal tunnel syndrome. He also noted that appellant's tarsal tunnel syndrome release surgery was not completely successful. The reports by Dr. German are cumulative in nature and are insufficient to warrant reopening the record in this case. Dr. German has reported several times that appellant had tarsal tunnel syndrome but has not related that accepted employment injury to his current medical condition or disability. Thus, the reports are the same as previously submitted reports of record and also fail to address the central issue in this case. The Office properly denied appellant's request for reconsideration and did not abuse its discretion in its refusal to reopen the record for merit review in this case.

The decisions of the Office of Workers' Compensation Programs dated June 5 and February 5, 1996 and August 29, 1995 are hereby affirmed.

Dated, Washington, D.C.  
July 14, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member