

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HOMER W. DELOVICH and DEPARTMENT OF LABOR,  
MINE SAFETY & HEALTH ADMINISTRATION, Fairmont, WV

*Docket No. 99-2100; Submitted on the Record;  
Issued September 25, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The case is on appeal for the second time.<sup>1</sup> On the first appeal, the Board reviewed an August 15, 1995 decision by which the Office found that in his claim for an emotional condition arising from his employment, appellant had established one compensable factor of employment consisting of his having an argument in March 1981 with a coal company official during his investigation of alleged safety violations. The Office found, however, that the medical evidence appellant submitted did not establish that appellant's emotional condition was caused by the March 1981 argument. Further, the Office found that the opinion of the referral physician, Dr. Ralph S. Smith, a Board-certified psychiatrist, that appellant's psychotic disorder and paranoid personality disorders were not caused by events at work, constituted the weight of the medical evidence. The Board found that Dr. Smith's opinion, which was complete and well rationalized, established that appellant's emotional condition was not work related and affirmed the Office's decision.

In an undated letter received by the Office on January 25, 1999, appellant requested reconsideration of the Board's decision and submitted additional evidence consisting of an undated letter to the Office alleging errors it made in its decision, a copy of the Board's May 8, 1998 decision, two letters from appellant to the Board, one dated September 25, 1995 and one undated, alleging errors in Dr. Smith's opinion and an attachment to the September 25, 1995

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<sup>1</sup> Docket No. 96-81 (issued May 8, 1998). The facts and history surrounding the prior appeal are set forth in the initial decision and are hereby incorporated by reference.

letter describing the history of his case. Appellant also submitted a letter dated January 4, 1995 listing his doctors, a report from Dr. John R. Vanin, a Board-certified family practitioner, psychiatrist and neurologist, dated December 14, 1992 and a medical report from Dr. Michael P. Taylor, a Board-certified family practitioner, dated June 10, 1994.

In his June 10, 1994 report, Dr. Taylor considered appellant's history of injury, performed a mental status examination and diagnosed recurrent, moderate major depression with atypical features. He stated that appellant's "deficits" were that he had a vocation that was very stressful and caused anxiety as well as appeared to worsen his mood. Dr. Taylor stated that, appellant's symptoms were worsened by the level of confrontational work and that his mood and anxiety "would perhaps worsen conflicts that he may encounter."

In his December 14, 1992 report, Dr. Vanin considered the history of appellant's anxiety and depression, performed a mental status examination and diagnosed *inter alia*, anxiety disorder with depression. He prescribed in part medication and follow-up with a local medical doctor.

Further, appellant submitted a letter dated January 20, 1995 to Dr. Vanin requesting a statement from him to counter Dr. Smith's report, a copy of a page from the Federal Register addressing Section 1614.201, Age Discrimination in Employment Act and Section 1614.203, Rehabilitation Act, a work restriction form dated November 16, 1992 from Dr. John Manchin, an osteopath and a letter from appellant's supervisor dated December 7, 1992. In that letter appellant's supervisor stated that she supervised appellant since January 24, 1990, that appellant complained of "suffering from stress that may have been work related," that he discussed family problems that concerned him and missed work because of his blood pressure. She stated that coal mine inspectors were constantly placed in stressful situations sometimes on a daily basis. The supervisor stated that appellant appeared to have a dual personality where on some days he would be irresponsible and defensive and on other days much more caring and understanding, but was dependable in emergency situations and "always" performed in a professional manner.

By decision dated March 22, 1999, the Office denied appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation 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.<sup>2</sup> A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).<sup>3</sup> If reconsideration is granted, the case is reopened and the case is reviewed on the merits.<sup>4</sup>

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<sup>2</sup> Section 10.606(b)(2)(i-iii).

<sup>3</sup> Section 100.608(a).

<sup>4</sup> *Id.*

The evidence appellant submitted in support of his request for reconsideration is either not relevant to the issue of whether the March 1981 argument caused his emotional condition, was previously submitted or is duplicative of previously submitted evidence. For instance, Dr. Vanin's December 14, 1992 report and Dr. Taylor's June 10, 1994 report had previously been submitted and further, do not address the March 1981 argument at work and whether it caused appellant's emotional condition. They, therefore, are not relevant and are repetitive. Appellant's September 25, 1995 letter to the Board, alleging errors in Dr. Smith's opinion and the undated attachment describing the history of his case, were previously submitted in the record and, therefore, are repetitive. Further, they are not relevant as they do not provide medical evidence addressing how the March 1981 argument caused appellant's emotional condition. Dr. Manchin's November 16, 1992 work restriction form is repetitive of a work restriction form appellant submitted in 1993 and also does not address causation. The other evidence appellant submitted including an undated letter to the Board, alleging errors in Dr. Smith's report, the excerpt from the Federal Register and the January 24, 1990 letter from his supervisor are not relevant as none of them contain well-rationalized medical evidence describing how the March 1981 argument caused appellant's emotional condition. Appellant, therefore, did not show that the Office erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office.

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 22, 1999 is affirmed.

Dated, Washington, DC  
September 25, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Member