U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD J. BARTLETT and DEPARTMENT OF DEFENSE, DEFENSE INVESTIGATIVE SERVICE, San Diego, CA

Docket No. 99-2002; Submitted on the Record; Issued July 9, 2001

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM, PRISCILLA ANNE SCHWAB

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 Office accepted appellant's claim for temporary aggravation of preexisting coronary artery disease, hypertension and stress reaction for an occupational disease claim filed on June 11, 1991. Although the Office did not accept any psychiatric conditions, it covered medical treatment for both appellant's heart and psychiatric problems. He was paid temporary total disability for intermittent dates in 1991. Appellant was then compensated based on his loss of wage-earning capacity. He retired on disability in January 1996.

By decision dated August 28, 1995, the Office terminated appellant's benefits, finding the weight of the medical evidence established that any work-related aggravation of his underlying coronary condition and hypertension had ceased. The Office found that the July 3, 1995 report of Dr. Roger Acheatel, a Board-certified cardiologist and the impartial medical specialist, to whom appellant was referred to resolve the conflict in medical opinion in this case, constituted the weight of the evidence and established that none of the factors of appellant's employment had resulted in any permanent aggravation of appellant's preexisting, underlying coronary artery disease. Appellant was advised that he remained entitled to compensation for his work-related psychiatric problem.

By decision dated September 3, 1996, an Office hearing representative affirmed the termination of compensation for appellant's coronary condition and hypertension based on the weight of Dr. Acheatel's July 3, 1995 report. His requests for reconsideration were denied, after a merit review was performed, in decisions dated September 20, 1996 and January 22, 1998. By decision dated April 27, 1999, the Office denied appellant's reconsideration request finding the evidence to be of a cumulative nature and not sufficient to warrant review of its prior decision.

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.[1] As appellant filed the appeal with the Board on May 24, 1999, the only decision properly before the Board is the April 27, 1999 decision, denying appellant's request for reconsideration.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly denied appellant's request for reconsideration.

Pursuant to 20 C.F.R. § 10.606 in effect on January 6, 1999, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent new evidence not previously considered by the Office.[2] The regulations provide that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.[3] 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.[4] Evidence that does not address the particular issue involved, in this case whether the Office properly terminated appellant's compensation on the grounds that he no longer suffers from any job-related aggravation of his preexisting, underlying coronary artery disease, does not constitute a basis for reopening the case.[5]

In this case, appellant sought reconsideration in letters of January 7 and 20, 1999. The documents appellant submitted in his January 7, 1999 reconsideration request, relate to a claim of discrimination, intimidation and harassment by management at the employing establishment. In a November 11, 1998 letter, appellant asserted that his employment caused the acceleration or exacerbation of the consequential lesion in his circumflex coronary artery, which was discovered and treated in January 1996. In a December 9, 1998 letter, appellant listed various incidents, which he felt were discriminatory and included a previously submitted May 2, 1995 report, pertaining to such incidents. In a December 6, 1998 statement, Robert J. Fitzgerald, senior investigator, opined that appellant and his team were under a significant amount of stress during the period October through December 1991.

The May 2, 1995 report is repetitive of evidence in the record as it was already submitted and considered by the Office in its January 22, 1998 decision. Appellant's allegations are essentially duplicative and cumulative of the evidence submitted in the record and considered by the Office in its January 22, 1998 decision.

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[1] *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[2] 20 C.F.R. § 10.606(b)(2) (1999). *See generally* 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.608(a) (1999).

[4] *Howard A. Williams,* 45 ECAB 853 (1994).

[5] *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Edward Mathew Diekemper*, 31 ECAB 224-25 (1979).

Similarly, the December 6, 1998 statement of Mr. Fitzgerald addressed the period October through December 1991. His statement is duplicative of evidence already in the record and is not sufficient to warrant reopening the claim for reconsideration.

Appellant's additional assertion in his November 11, 1998 letter, that consideration should be given to his employment from August 1993 to August 1995, is devoid of any allegations of discrimination, harassment or intimidation. Moreover, appellant's assertion that he has been unable to perform his security job position since August 1995 does not address the specific issue in this case and, therefore, does not constitute a basis for reopening the case.[6]

In the January 20, 1999 reconsideration request, appellant argued that the Office erred in its decision to terminate medical benefits because of his preexisting coronary condition. Evidence submitted consisted of a May 18, 1998 deposition of Dr. Acheatel, the impartial medical examiner in this case; a December 29, 1998 letter from Dr. Douglas Triffon,[7] appellant's treating cardiologist, and a December 29, 1998 letter from Dr. Stephen Signer, a Board-certified psychiatrist.

On reconsideration, appellant contended that in his deposition, Dr. Acheatel "virtually admits that he did not apply the correct standards [regarding permanent aggravation], because the Office did not furnish him with the proper legal guidelines." The Board notes that for appellant to establish that the Office erred in relying upon Dr. Acheatel's July 3, 1995 referee opinion, that appellant's condition was only a temporary aggravation of his coronary artery disease, which had resolved at the time he was seen, Dr. Acheatel's deposition must be inconsistent with his earlier report of July 3, 1995 so as to cast doubt upon the validity of the earlier report. A review of his deposition shows that Dr. Achaetel clearly concluded that the temporary aggravation of appellant's coronary artery disease ceased when he evaluated appellant in 1995, because "at that period of time [1995], his blood pressure seemed to be well controlled, his lipids seemed to be well controlled, so the residuals were in check." Dr. Acheatel's July 3, 1995 report, therefore, was not taken out of context or misinterpreted by the Office in terminating appellant's compensation for his underlying coronary condition and hypertension. His deposition is repetitious of his earlier report of July 3, 1995. Appellant's arguments, therefore, have no legal color of validity and, therefore, are insufficient to require a review of the Office's last merit decision of January 22, 1998.[8]

Appellant contended that his subsequent development of a new blockage in January 1996 was related to his accepted condition. The Board notes that Dr. Acheatel addressed appellant's 1996 artery blockage, but did not relate it to any work-related factors. Thus, this medical evidence is not relevant to appellant's claim. Furthermore, although Dr. Acheatel discussed appellant's permanent disability with respect to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, this was not an issue in the underlying termination decision and is not related to prior merit decision.

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[6] *Id.*

[7] A copy of Dr. Triffon's December 29, 1998 letter was also submitted with appellant's reconsideration request.

[8] *Constance G. Mills,* 40 ECAB 317 (1988).

In his December 29, 1998 letter, Dr. Triffon noted that the causes of coronary disease were multifactorial and that stress certainly played a role, as did appellant's hypertension, depression and dyslipidemia. Dr. Triffon stated that recent studies have found that stress correlated with a greater rate of progression than in nonstress groups. Although Dr. Triffon opined that the stress resulting from appellant's employment contributed in part to his progression and/or acceleration of his coronary heart disease and noted that recent studies found that stress correlated to the progression of coronary disease, this letter is repetitive of medical arguments Dr. Triffon made in a September 16, 1997 report which the Office had previously considered in its January 22, 1998 merit decision. Evidence, which is duplicative or repetitive, of that previously considered is cumulative in nature and not sufficient to warrant review.

Also submitted was a December 29, 1998 letter from Dr. Singer, who stated that, while appellant had several other factors that contributed to coronary artery disease, he experienced excessive work in a hostile work environment that contributed to the development of coronary artery disease. Reference to a number of articles dealing with coronary artery disease risk factors was provided. Dr. Singer opined that appellant was completely and permanently disabled from any occupation due to the stresses at his workplace.

The role of stress and coronary artery disease has also been previously considered in this case and, thus, is repetitious of earlier arguments and does not form a basis for a review of appellant's claim on the merits. The Office found that this aspect of the report was duplicative of evidence already considered and, therefore, cumulative of evidence in the medical record. Dr. Singer's reports are insufficient to warrant further reconsideration in this case.

The April 27, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 9, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member