

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY E. TRAVERS and NATIONAL ARCHIVES & RECORDS
ADMINISTRATION, NATIONAL ARCHIVES LIBRARY, Washington, DC

*Docket No. 00-1282; Submitted on the Record;
Issued November 2, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's February 26, 1999 request for reconsideration.

In the prior appeal of this case,¹ the Board found that the Office did not meet its burden of proof to justify the termination of appellant's compensation after June 15, 1994, as there was a conflict in medical opinion on the matter. The Board found a second conflict in medical opinion, necessitating referral to an impartial medical specialist, pursuant to 5 U.S.C. § 8123(a), on whether appellant was entitled to compensation beginning February 16, 1994 for disability exceeding two hours a day. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

On remand, the Office referred appellant to an impartial medical specialist to resolve the conflicts.

In a decision dated September 25, 1998, the Office found the opinion of the impartial medical specialist to be dispositive: Appellant was not disabled more than two hours a day after February 16, 1994 and she had no further disability for work due to the effects of her employment injury after June 15, 1994. The Office further found that appellant had failed to establish that she sustained an emotional condition as a result of her accepted employment injury. The Office found that appellant's psychological condition resulted instead from noncompensable factors of employment.

On February 26, 1999 appellant requested reconsideration. In support of her request, she submitted all of her medical documentation from her attending physician since 1994. She also submitted a decision from the Social Security Administration finding her to be disabled from June 22, 1993 through August 31, 1995.

¹ Docket No. 95-1468 (issued December 10, 1997).

In a decision dated November 19, 1999, the Office denied a merit review of appellant's case on the grounds that the evidence submitted in support of her request for reconsideration was immaterial and cumulative. The Office found that the medical reports and notes submitted by appellant were merely copies of reports and notes already a part of the record and previously considered by the Office. The Office further found that the decision of the Social Security Administration had no bearing on the Office's prior decision.

An appeal to the Board must be filed no later than one year from the date of the Office's final decision.² Because appellant filed her February 13, 2000 appeal more than one year after the Office's September 25, 1998 decision, the Board has no jurisdiction to review that decision. The only decision that the Board may review in this appeal is the Office's November 19, 1999 decision denying appellant's February 26, 1999 request for reconsideration. Therefore, the only issue before the Board is whether the Office abused its discretion in denying that request.

The Board finds that the Office properly denied appellant's February 26, 1999 request for reconsideration.

Section 10.606(b) of the Code of Federal Regulations³ provides that an application for reconsideration, including all supporting documents, must be submitted in writing and 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. The request may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If the Office grants reconsideration, the case is reopened and reviewed on its merits. Where the request fails to meet at least one of the standards described, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁴

Appellant's February 26, 1999 request for reconsideration fails to meet at least one of these standards. Appellant submitted many medical reports and notes from her attending physician, but evidence that repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case.⁵ Further, evidence that does not address the particular issues involved constitutes no basis for reopening a case.⁶ Therefore, to the extent that any of the evidence submitted with appellant's request can be considered new, it must directly address the issues adjudicated by the Office's September 25, 1998 decision. The Board has examined the evidence submitted and can find no narrative medical opinion squarely taking issue with Office's findings on September 25, 1998; namely: that appellant was not disabled for work more than two hours a day after February 16, 1994; that she had no further

² 20 C.F.R. § 501.3(d) (time for filing); *see id.* § 501.10(d)(2) (computation of time).

³ 20 C.F.R. § 10.606(b).

⁴ *Id.* at § 10.608.

⁵ *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

⁶ *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

disability for work due to the effects of her employment injury after June 15, 1994; and that she sustained no emotional condition as a result of her accepted employment injury.

Appellant also submitted a decision from the Social Security Administration finding disability for a specific period. This issue has been raised in other cases and has been squarely settled by the Board. In the case of *Hazelee K. Anderson*, 37 ECAB 277 (1986), the Office rejected the claimant's claim on the grounds that the medical evidence of record failed to establish that she was disabled after March 13, 1979 as a result of her November 14, 1978 employment injury. The claimant requested reconsideration and provided a copy of a September 24, 1984 decision awarding her social security benefits. The Office found that the evidence was insufficient to warrant modification of the prior decision. On appeal, the Board stated:

“Appellant submitted a copy of a decision of the Social Security Administration which awarded her benefits. In this regard, it appears that appellant is under the impression that because she was awarded disability benefits for retirement purposes she is *ipso facto* disabled for compensation purposes under the Federal Employees' Compensation Act. This is not so and, as the Board has stated, entitlement to benefits under one Act does not establish entitlement to [benefits under] the other. The findings of other administrative agencies have no bearing on proceedings under the Act, which is administered by the Office and the Board and a determination made for disability retirement purposes is not determinative of the extent of physical impairment or loss of wage-earning capacity for compensation purposes. The two relevant statutes (Social Security Act and the FECA) have different standards of medical proof on the question of disability; disability under one statute does not prove disability under the other. Furthermore, under the FECA, for a disability determination, appellant's conditions must be shown to be causally related to her federal employment. Under the Social Security Act, conditions which are not employment related may be taken into consideration in rendering a disability determination.”⁷

So, too, in this case appellant's entitlement to benefits under the Social Security Act is not determinative of her entitlement to benefits under the Act. The decision of the Social Security Administration is immaterial and its submission to the Office with a request for reconsideration does not entitle appellant to a merit review of her claim.

⁷ 37 ECAB 277, 282-83 (1986) (citations omitted).

The November 19, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 2, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member