U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LESLIE B. CARROLL and DEPARTMENT OF VETERANS AFFAIRS, LONG ISLAND NATIONAL CEMETERY, Farmingdale, NY

Docket No. 02-510; Submitted on the Record;
Issued July 12, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits; and (2) whether the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits.

Appellant, a 46-year-old heavy equipment operator, filed a notice of occupational disease claim on July 9, 1998 alleging that he developed a musculoskeletal disorder due to factors of his federal employment. Appellant filed a second claim on August 8, 1998 alleging that he developed bilateral tenosynovitis due to his employment. The Office accepted appellant's claim for bilateral carpal tunnel syndrome, right lateral epicondylitis and authorized bilateral releases. The Office entered appellant on the periodic rolls on April 8, 1999. The Office proposed to terminate appellant's compensation benefits on June 19, 2001 and finalized this decision on August 10, 2001. Appellant requested reconsideration on September 12, 2001. By decision dated November 8, 2001, the Office declined to reopen appellant's claim for consideration of the merits.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[1] 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.[2] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[3] To

[1] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[2] *Id.*

[3] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[4]

In this case, appellant's attending physician, Dr. Michael Soojian, an orthopedic surgeon, supported appellant's continuing disability for work and the need for medical treatment. In a report dated March 24, 2000, Dr. Soojian noted appellant's history of injury and his medical history. He stated that appellant had decreased range of motion in his right elbow with weakness and minimal swelling. Dr. Soojian found that appellant had limitation of motion in flexion and extension. He found a marked loss of function of both upper extremities, provided work restrictions and stated that appellant could not return to his date-of-injury position. In a report dated January 12, 2001, Dr. Soojian repeated his earlier findings.

The Office referred appellant for a second opinion evaluation with Dr. Richard Goodman, an orthopedic surgeon. In a report dated September 14, 2000, Dr. Goodman noted appellant's history of injury, medical history and performed a physical examination finding that appellant had totally recovered from his accepted employment injuries and could return to his date-of-injury position. The Office requested a supplemental report on September 14, 2000 and on November 13, 2000 Dr. Goodman responded and stated that appellant's decreased motor power and decreased sensory perception were not consistent with anatomical or neurological organic disease.

Section 8123(a) of the Federal Employees' Compensation Act,[5] provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." The Office properly found a conflict between appellant's attending physician who supported his continuing residuals and disability and the second opinion physician who found that appellant could return to his date-of-injury position.

The Office referred appellant to Dr. Frank D. Oliveto, a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated March 12, 2001, Dr. Oliveto noted appellant's history of injury, medical history and performed a physical examination. He found that appellant had full range of motion and subjective weakness in grasp. Dr. Oliveto found negative Tinel's and Phalen's tests and full range of motion of both wrists and digits of both hands. He found that appellant had equal and symmetrical reflexes with no motor or sensory deficit or atrophy of either upper extremity. Dr. Oliveto found that appellant had recovered fully and could return to his date-of-injury position. He found that appellant had no permanent condition.

In situations were there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[6] In this case, Dr. Oliveto's report is based on

[4] *Id.*

[5] 5 U.S.C. §§ 8101-8193, 8123(a).

[6] *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

a proper factual background and provided his findings on physical examination. He concluded that appellant did not have any objective findings related to his accepted conditions and that he could return to full duty. The Board finds that this report is entitled to the weight of the medical evidence and establishes that appellant is no longer disabled.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits.

The Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law, advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.[7]

In support of the request for reconsideration, appellant's attorney resubmitted Dr. Soojian's January 12, 2001 report. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.[8]

Appellant's attorney also argued that the Office erred in requesting supplemental reports from Drs. Goodman and Oliveto. The Board notes that the Office is allowed to seek clarification if necessary and that this argument is not valid. Appellant's attorney further argued that Dr. Oliveto's opinion was not sufficient as he did not view appellant's job description. However, as the Office noted, Dr. Oliveto found that appellant had no residuals nor disability due to his accepted employment injuries; therefore, appellant could perform any position he wished.

As there was no new evidence nor argument establishing error in the application or interpretation of a specific point of law; nor a relevant legal argument not previously considered by the Office, the Office properly denied appellant's request for reconsideration.

[7] 5 U.S.C. §§ 10.609(a) and 10.606(b).

[8] *See Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

The November 8 and August 10, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
July 12, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member