U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD CHOW and DEPARTMENT OF THE NAVY, LONG BEACH NAVAL SHIPYARD, Long Beach, Calif.

Docket No. 96-1498; Submitted on the Record;
Issued June 24, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM, A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On March 5, 1992 appellant, then a 60-year-old chemist, filed a claim for an emotional condition which he attributed to factors of his federal employment. Appellant noted that a reduction-in-force in 1989 resulted in the elimination of his position and compelled him to take a reduction in grade. He was subsequently assigned to a detail in May 1989 as a quality assurance specialist not to exceed September 1, 1989, and thereafter was unassigned without a position description until January 23, 1992. Appellant contended that he could no longer advance in his career. He stated that on January 22, 1992 he was advised by his supervisor that he would be transferred to a position to help eliminate a backlog of non-compliance letters pertaining to hazardous waste disposal. Appellant indicated that his new duty station would be Building 174, which was located next to a dry dock. Appellant contended that in Building 174 he would be exposed to welding fumes, dust from sandblasting, solvents from spray painting and other fumes emanating from the dry dock area which would adversely affect his health. He reported to duty on January 27, 1992 but stopped work on January 28, 1992.

On July 31, 1992 the employing establishment submitted statements from appellant's present and former supervisors. Gary Martz noted that all reduction-in-force procedures were followed and that the shipyard had assigned appellant to work which conformed to his medical restrictions. Attached materials noted that the reduction-in-force was effective September 19, 1988, not in 1989 as was alleged by appellant. L.H. Smith indicated that when appellant reported to work on January 27, 1992, appellant indicated that the air vents of building 174 were dirty and that dust could affect his health. Appellant also noted that the proximity of the building with the dry dock could cause a problem. Appellant was advised to attempt to work in the

position. Appellant worked on January 27 and 28, 1992 but was placed on sick leave commencing January 29, 1992.[1]

By decision dated November 19, 1992 the Office rejected appellant's claim finding that his emotional condition did not arise in the performance of duty. The Office found that appellant's frustration over the reduction-in-force, his subsequent down grading and inability to obtain a further promotion did not constitute compensable factors of employment. The Office noted that the employing establishment had made reasonable accommodation for appellant's health restrictions and found that his fear of exacerbating his medical conditions did not constitute a compensable factor of his employment.

Appellant requested a hearing before an Office hearing representative which was held on June 22, 1993. In a decision dated September 30, 1993 and finalized October 1, 1993, the Office hearing representative affirmed the November 19, 1992 decision. The hearing representative addressed appellant's contention that his assignment to building 174 violated his medical restrictions due to blood pressure problems. He noted that appellant was restricted from being exposed to smoke, dust, fumes or other potential pneumotoxic substances, including asbestos dust and fiber. The hearing representative found that appellant did not establish that his assignment to building 174 was outside his work restrictions and that appellant's fear that it was did not constitute a compensable factor of employment.

On September 15, 1994 appellant, through his attorney, requested reconsideration of the hearing representative's decision. In support of his claim, appellant submitted additional evidence including a December 14, 1993 statement from Mel Floria, an environmental engineer, describing conditions in and around building 174; a 1967 photograph of the area; and an April 28, 1994 article describing activities of a hazardous materials minimization team at the shipyard.

By decision dated November 2, 1994 the Office denied modification of the September 30, 1993 decision. The Office found that appellant had failed to establish that, at the time of his assignment to building 174 on January 27 or 28 1992, he was exposed to any environmental hazards which affected his health. Rather, it was found that appellant's reaction to the possibility that he might be exposed to substances which might worsen his condition was not a compensable factor of employment.

On October 30, 1995 appellant, through counsel, again requested reconsideration of his claim. Appellant submitted photographs of the shipyard and statements of employees pertaining to paint used at the dry dock and sandblasting operations. On November 1, 1995 appellant submitted two articles from a local newspaper which addressed safety violations at the shipyard. He contended that his supervisors knew or should have known that building 174 was subject to noise and contaminants related to work in the dry dock.

[1] Karen Booth, the employing establishment injury compensation administrator, noted that Building 174 was a carpeted office area, well lit and served by central heating and air conditioning. She noted that Mr. Smith specified there were no solvents, paints, chemicals, or other hazardous materials in the building.

By decision dated January 18, 1996, the Office denied appellant's request for reconsideration, finding that the evidence submitted in support of the application was insufficient to warrant review of the prior decision as it did not establish actual exposure to hazardous elements as alleged by appellant. It was found that the employee statements were not relevant to the period of time of appellant's alleged exposure in January 1992 as the employees were not present at building 174 at that time. Further, it was noted that sandblasting and painting was not taking place at the dry dock on the days in January 1992 when appellant reported to work. Finally, the Office found that the newspaper articles related to safety violations at the shipyard were not relevant to the specifics of appellant's claim.

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

In the present case, appellant filed his appeal with the Board on April 16, 1996. For this reason, the Board has jurisdiction to review only the January 18, 1996 decision denying appellant's request for reconsideration.[2]

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her 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 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] The Board has held that evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[4] Similarly, evidence which does not address the particular issue involved does not constitute a basis for reopening a claim.[5]

In support of his request for reconsideration, appellant submitted additional evidence concerning his allegations of health and safety violations at the employing establishment. The Board notes, however, that newspaper clippings, medical texts and excerpts from publications are of little evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.[6] For this reason, the newspaper clippings, material data sheets and photographs taken in 1995 are not relevant to the conditions to which appellant alleged exposure in January 1992. Nor are the statements of former coworkers at the shipyard directly relevant to the condition of Building 174 on or about January 27 and 28, 1992 as it has not been demonstrated that these individuals were present in, or otherwise had immediate

[2] *See* 20 C.F.R. § 501.3(d) limits the Board's jurisdiction to review of Office decisions issued within one year of the date of filing an appeal; *see Santiago Gonzalez*, 43 ECAB 189 (1991)

[3] *See Mary L. Brooks*, 46 ECAB 226 (1994); *see also* 20 C.F.R. §§ 10.138(b)(1)-(2).

[4] *Saundra B. Williams*, 46 ECAB 546 (1995); *Eugene F. Butler*, 36 ECAB 393 (1984).

[5] *Mary Lou Barragy*, 46 ECAB 781 (1995); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

[6] *Dominic E. Coppo*, 44 ECAB 484 (1993).

knowledge of conditions in that work area at that time. Nor was it demonstrated that sandblasting or painting took place in the neighboring dry dock during the days in which appellant was present in Building 174.[7] As such, the evidence submitted by appellant was not sufficiently relevant to require the Office to reopen his claim and the Office properly denied reconsideration in this case.

The January 18, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
June 24, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] Fear of future injury is not a compensable factor of employment. This is true even if the employee were to be found medically disqualified to continue in employment because of the effect which employment factors might have on the underlying condition; *see Joseph G. Cutrufello*, 46 ECAB 285 (1994).