

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN S. LINK and DEPARTMENT OF HEALTH & HUMAN SERVICES,
SOCIAL SECURITY ADMINISTRATION, Baltimore, Md.

*Docket No. 98-390; Oral Argument Held October 21, 1998;
Issued November 19, 1998*

Appearances: *Irving L. Becker, Esq.*, for appellant; *Sheldon G. Turley, Jr., Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

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.

On August 25, 1994 appellant filed an occupational claim, Form CA-2, alleging that he sustained psychophysiological reaction and major depression, anxiety, gastrointestinal and cardiovascular symptoms. Appellant stated that his gastrointestinal problems intensified after his supervisor, John Olson, became very angry and hostile toward him in November 1991. He stated that his condition prevented him from working as of June 3, 1993 when he was hospitalized for a possible coronary attack. On June 23, 1993 appellant filed a recurrence of disability, Form CA-2a, alleging that he sustained a recurrence of disability of the September 1987 employment injury commencing June 3, 1993. In an attached statement, appellant reiterated that Mr. Olson became very angry and hostile toward him on November 7, 1991 for no apparent reason. Appellant stated that the hostility was subtle in that Mr. Olson would return a greeting with glare, would say hello to his support analyst, Helen Wilson, but not to him, write very critical notes about him and just "ignore him in general." Appellant stated that management moved him to another room but he was still subject to Mr. Olson's supervision which caused him anxiety and panic, and that this arrangement continued until February 1992. Appellant stated the situation worsened because Ms. Wilson who shared his office did not do her work, that he had to do her work for her, and management did nothing to correct the problem. Appellant also stated that he sought reassignments to a less stressful situation but was refused. Further, appellant stated that in January 1993 he and Ms. Wilson were assigned to separate offices and he received a new support analyst in April 1993. Appellant stated that these measures were only temporarily helpful as he had daily contact with Ms. Wilson who was resentful and the new support analyst required training and was sometimes reassigned to other work which meant he had no help with

his work. Appellant stated that he was eventually reassigned another position on July 11, 1993 but by that time he was so depressed he was almost nonfunctional. He also stated that he was placed in a room with 25 to 30 other employees where he had no privacy and was unable to properly concentrate. Appellant stated that as of July 28, 1993 he was unable to work and he retired on disability effective October 23, 1993.

Appellant submitted notes documenting his problems at work from November 7, 1991 through July 16, 1993. On May 19, 1995 the employing establishment's Acting Executive Officer, Marta Goodman, submitted unsigned statements made by Jane Lyles who was appellant's second level supervisor in November 1991 and eventually replaced Mr. Olson as appellant's first level supervisor describing her version of appellant's complaints. In one of her statements apparently dated July 7, 1993, Ms. Lyles concluded that she did not think appellant's physical and mental symptoms were caused by too much stress on the job but that he had problems in interpersonal relationships. By letters dated October 14, 1994 and August 10, 1995, the Office requested additional information from appellant. Appellant subsequently submitted a more detailed statement of problems in his work environment and reports from his doctors, from Dr. Ronald L. Ginsberg, a Board-certified internist, dated April 29, June 24 and December 2, 1992, January 19 and March 29, 1993 and January 24, 1994 and from Dr. Merrill I. Berman, a Board-certified psychiatrist and neurologist, dated December 3, 1992, July 15 and 23, August 5, 1993 and March 11, 1994. These doctors' reports document that appellant suffered from ongoing gastrointestinal and cardiovascular problems. In his January 21, 1994 report, Dr. Ginsberg stated that appellant's irritable colon syndrome was due in part to work-related stress. In his March 11, 1994 report, Dr. Berman noted that appellant's recurrence could be traced to November 1991 when his supervisor became angry with him for no apparent reason. He noted that appellant's request for reassignment was refused, that the support analyst appellant was assigned was not helpful and resulted in appellant doing her work in addition to his own, and that another support analyst appellant was assigned resulted in appellant doing her work. Dr. Berman stated these matters caused and exacerbated appellant's stress.

By decision dated September 19, 1995, the Office denied the claim, stating that the evidence of record failed to demonstrate that the claimed condition occurred in the performance of duty.

On September 26, 1995 appellant requested an oral hearing before an Office hearing representative which was held on May 20, 1996. At the hearing, appellant stated that Mr. Olson got mad at him in November 1991 because he thought appellant snubbed his wife when Mr. Olson brought her to the office. Appellant stated that he said hello to Mr. Olson's wife but did not engage in conversation with her because he was engrossed in his work assignment. He reiterated that Mr. Olson sent him vicious, critical notes and would either avoid him, ignore him or glare at him in the hall and that Ms. Wilson was very disruptive for him because she did not perform her work. He also stated that he complained to Ms. Lyles about his stress but she did nothing and he did not feel the employing establishment had been truthful and cooperative in dealing with him. A letter from Ms. Wilson dated November 30, 1995 stated that she could not recall the date but appellant told her when she had returned from the cafeteria that Mr. Olson had verbally attacked him for allegedly snubbing his wife, that appellant was quite shaken and subsequently Mr. Olson was reassigned to a different office.

By decision dated September 5, 1996, the hearing representative affirmed the Office's September 19, 1995 decision.

By letter dated July 11, 1997, appellant requested reconsideration of the Office's decision and submitted evidence consisting of a report from Dr. Berman dated June 24, 1997, nurses' notes dated from April 8 through July 8, 1993, and correspondence between appellant and the Office of Personnel Management dated November 20, 1996 and March 28, 1997 addressing appellant's request for medical records from the employing establishment and from Dr. David W. Fouts, Board-certified in preventive medicine. In his June 24, 1997 report, Dr. Berman addressed the Office hearing representative's finding that his March 11, 1994 did not contain the requisite medical rationale addressing causation, stating that the stresses at appellant's work were in large part the cause of the stresses at home. He stated that unlike appellant's problems at home, the stresses at work were unsolvable and compounded and exacerbated appellant's symptoms, particularly the psychophysiological ones. Dr. Berman stated that it was well known in the annals of psychosomatic medicine that a deep seated psychological problem presents with a deep seated physiological symptom such as ulcers, ulcerative colitis, Chron's disease and irritable bowel. He also stated that chronic stress in the workplace was the proximate cause of appellant's disability.

In his reconsideration request, appellant stated that he believed Dr. Berman's June 24, 1997 report contained the requisite rationale to establish a causal connection between his emotional condition and his employment and that management failed to provide him with additional reports from Dr. Fout which would have supported his claim. Appellant also stated that the entire work environment was not considered in the Office hearing representative's decision as the employing establishment refused to provide information he requested which would have corroborated the problems appellant alleged he had at work. Appellant contended that Ms. Wilson's November 30, 1995 statement corroborated the fact that he received abusive treatment from Mr. Olson in November 1991. He also contended that the statements submitted by Ms. Goodman, but made by Ms. Lyles, were not probative because Ms. Goodman had no knowledge of appellant's work problems.

By decision dated October 7, 1997, the Office denied appellant's reconsideration request.

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 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 this appeal with the Board on October 31, 1997, the only decision properly before the Board is the October 7, 1997 decision, denying appellant's request for reconsideration.

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

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees' Compensation Act,² the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.³ Section 10.138(b)(2) provides 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.⁴ 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.⁵ Evidence that does not address the particular issue involved, in this case whether appellant established that his emotional condition and related physical symptoms of gastrointestinal and cardiovascular problems are work-related, does not constitute a basis for reopening the case.⁶

In the present case, the evidence appellant submitted in support of his reconsideration request is irrelevant to his claim or duplicative of evidence previously submitted. In his June 24, 1997 report, Dr. Berman stated that appellant's chronic stress at work was the proximate cause of appellant's disability and the stresses at work compounded and exacerbated claimant's symptoms, particularly his psychophysiological ones. His report is not relevant, however, because it does not contain medical rationale explaining how specific compensable factors of appellant's federal employment caused appellant's emotional condition.⁷ His reference to "stresses" is not sufficiently detailed. Further, Dr. Berman's statement that generally it is well known in the annals of psychosomatic medicine that deep seated psychological problems present with deep seated physiological symptoms such as ulcers, ulcerative colitis, Chron's disease and irritable bowel is not specific to appellant but is general in nature and therefore is irrelevant.⁸ Dr. Berman's report is also duplicative of the medical evidence appellant had previously submitted as in his prior reports Dr. Berman had also stated that appellant's emotional condition was caused by his employment and provided insufficient rationale. Moreover, appellant was not able to establish that compensable factors of employment caused his emotional condition.⁹ The nurse's notes are not relevant medical evidence because a nurse is not a physician within the meaning of the Act.¹⁰ The correspondence between appellant and the Office of Personnel

² 5 U.S.C. § 8181 *et seq.*

³ 20 C.F.R. § 10.138(b)(1) and (2).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁶ *Richard L. Ballard*, *supra* note 5 at 150; *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁷ *See June A. Mesarick*, 41 ECAB 898, 908-09 (1990).

⁸ *See Durwood H. Nolin*, 46 ECAB 818, 821-22 (1995).

⁹ *See Sharon R. Bowman*, 45 ECAB 187, 194-95 (1993); *June A. Mesarick*, *supra* note 7 at 908-09.

¹⁰ *Sheila A. Johnson*, 46 ECAB 323, 327 (1994).

Management is not relevant because it does not address the cause of appellant's emotional condition.

The decision of the Office of Workers' Compensation Programs dated October 7, 1997 is hereby affirmed.

Dated, Washington, D.C.
November 19, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member