U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALVIN L. DORSEY and DEPARTMENT OF THE NAVY, NAVAL AIR STATION, New Orleans, La.

Docket No. 97-1038; Submitted on the Record;
Issued April 20, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON, MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's August 5, 1996 request for reconsideration.

The Board has duly reviewed the record on appeal and finds that the Office properly denied appellant's request.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[1]

To obtain a review of the merits of his claim, a claimant need not submit all evidence necessary to discharge his burden of proof. The requirement pertaining to the submission of evidence specifies only that the evidence be relevant and pertinent and not previously considered by the Office.[2] A claimant has a right to secure a review of the merits of his case when he presents new evidence relevant to his contention that the decision of the Office is erroneous. The presentation of such new and relevant evidence creates a necessity for review of the full case record, that is, of all of the evidence, in order to properly determine whether the newly submitted evidence, considered with that previously in the record, shifts the weight of the evidence in such a manner as to require modification of the earlier decision. If the Office determines that the new

[1] 20 C.F.R. § 10.138(b)(1).

[2] *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

evidence lacks substantive probative value, it may deny modification of the prior decision, but only after the case has been reviewed on its merits.[3]

In a decision dated September 18, 1995, the Office terminated appellant's compensation benefits on the grounds that the weight of the medical opinion evidence, as represented by the April 12, 1994 opinion of Dr. Arthur M. Auerbach, a Board-certified orthopedic surgeon and Office referral physician, negated residual disability. He opined that appellant had long since recovered from the specific lumbosacral strain injury of March 3, 1982. Dr. Auerbach noted that, as a general matter, lumbosacral strains would most probably last at the most one year, beyond which appellant would need no further medical orthopedic care. He concluded that appellant did have restrictions attributable to the natural progression of osteoarthritis of the lumbosacral spine unrelated in any way to work or to the specific injury on March 3, 1982.

To support his August 5, 1996 request for reconsideration, appellant submitted a July 2, 1996 report from Dr. Bruce E. Razza, an orthopedic surgeon. He related appellant's history and complaints and reported that extensive medical records were made available for review. After reporting his findings on physical examination and the results of x-rays, Dr. Razza gave an impression of chronic lumbar radiculopathy syndrome associated with multilevel spondylosis and probable spinal stenosis. He opined that the source of appellant's complaints was the work injury in 1982, based on appellant's history of developing back symptoms following the injury and with ongoing symptoms since that time. Dr. Razza stated that appellant had objective electrodiagnostic evidence to support his chronic complaints, as well as positive findings on physical examination. He reported there was "a plausible explanation from an orthopedic standpoint" for appellant's ongoing symptoms, which would likely preclude any return to gainful employment that would entail repetitive lifting, bending, squatting, stooping, climbing, prolonged standing and sitting. Dr. Razza concluded: "I believe [appellant's] symptoms and physical findings, magnetic resonance image, x-rays and electromyograms are consistent and give support to his complaints which historically are the sequelae of his work injury dating all the way back to 1982. Prognosis is guarded in light of the chronicity of his complaints for any spontaneous resolution of his symptoms."

In a decision dated November 1, 1996, the Office denied appellant's request for a review of the merits of his claim.

The Board finds that Dr. Razza's July 2, 1996 report is new but not relevant to the issue decided by the Office in its September 18, 1995 decision, which was that appellant no longer suffered residuals of the lumbosacral strain sustained on March 3, 1982. He did not take issue with this particular point. Instead, Dr. Razza drew a connection between the employment injury of 1982 and a condition not yet accepted by the Office, namely, chronic lumbar radiculopathy syndrome associated with multilevel spondylosis and probable spinal stenosis. Appellant may legitimately expand his claim to include such a condition, for which he bears the burden of proof to establish a causal relationship, but the medical opinion evidence submitted with respect to that matter does not tend to show that the Office's decision to terminate benefits for the condition of

[3] *Joseph R. Alsing*, 39 ECAB 1012 (1988).

lumbosacral strain should be changed. Evidence that does not address the particular issue involved constitutes no basis for reopening a case.[4]

Because appellant did not show that the Office erroneously applied or interpreted a point of law, did not advance a point of law or a fact not previously considered by the Office and did not submit relevant and pertinent evidence not previously considered by the Office, the Board finds that the Office properly denied his August 5, 1996 request for reconsideration.[5]

The November 1, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
April 20, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member

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

[5] When an application for review of the merits of a claim does not meet at least one of the three requirements for obtaining a merit review, the Office will deny the application for review without reviewing the merits of the claim. 20 C.F.R. § 10.138(b)(2).