

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RODRIGO R. HERNANDEZ and U.S. POSTAL SERVICE,
POST OFFICE, San Jose, CA

*Docket No. 98-1228; Submitted on the Record;
Issued December 27, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration on the merits under 5 U.S.C. § 8128(a).

On January 22, 1986 appellant, then a 37-year-old letter carrier, filed a claim alleging that he sustained an emotional condition in the performance of duty. The Office accepted the claim for a temporary aggravation of a preexisting adjustment disorder. Appellant was off work from January 22 to March 8, 1996 during which time he received compensation benefits. Appellant stopped work again on October 22, 1987 alleging that he sustained a recurrence of disability.¹ By decision dated August 24, 1990, the Office denied appellant's claim on the grounds that he failed to submit sufficient evidence to establish that he sustained a recurrence of disability causally related to his accepted work injury. A hearing representative affirmed the Office's August 24, 1990 decision. The Office subsequently denied two requests for reconsideration filed by appellant. At appellant's request the matter was also reviewed by the Board. By decision dated August 12, 1997, the Board affirmed the Office's last merit decision dated August 22, 1994, finding that appellant failed to carry his burden of proof to establish a recurrence of disability on or after October 22, 1997 causally related to the January 22, 1986 employment injury.²

¹ Appellant initially claimed that he sustained a new traumatic injury on October 22, 1987 in that he developed an emotional condition based on harassment when he was wrongly disciplined for driving in an unsafe manner, falsifying government documents, and expanding his lunch period. Appellant's traumatic injury claim was developed under file number A13-787301 and his recurrence of disability claim was developed under the file number A13-839652. The two case files were later combined under file number A13-899300. By decisions dated August 30 and December 20, 1988, the Office denied appellant's traumatic injury claim on the grounds that he failed to allege a compensable factor of employment with respect to the employing establishment's disciplinary actions on October 22, 1987.

² *Rodrigo R. Hernandez*, Docket No. 95-1153 (August 12, 1997) which is incorporated by reference herein.

Appellant filed a request for reconsideration on December 3, 1997. In support of his reconsideration request, he submitted an October 8, 1997 report from Dr. Hector S. Cerezo, a Board-certified psychiatrist. He also submitted a medical article outlining the criteria for a major depressive episode.

In a decision dated February 11, 1998, the Office denied appellant's request for reconsideration on the grounds that the newly submitted evidence was insufficient to warrant a merit review.

The Board finds that the Office properly refused to reopen appellant's case for further merit review pursuant to 5 U.S.C. § 8128(a).

Section 8128(a) of the Federal Employee's Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.³ The regulations provide 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.⁴ When 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.⁵ 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.⁶ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁷ Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.⁸

In the instant case, appellant did not allege on reconsideration that the Office erroneously applied or interpreted a point of law, nor did he advance a point of law or a fact not previously considered by the Office. Although appellant submitted a new medical report from Dr. Cerezo dated October 8, 1997, that report is repetitious of his earlier opinion in this case. As noted by the Board in the prior appeal, Dr. Cerezo opined in an October 26, 1992 report that appellant's emotional condition on or after October 22, 1987 was a continuation of his emotional work injury on January 22, 1986. He noted that appellant's depressive symptoms had stabilized following the January 22, 1986 work injury, but that circumstances on October 22, 1987 exacerbated his emotional condition and rendered appellant totally disabled. In his October 8,

³ 5 U.S.C. § 8128; *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁴ 20 C.F.R. § 10.138(b)(1).

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁷ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁸ *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

1997 report, Dr. Cerezo provides essentially the same medical opinion as before, stating that appellant's feelings of intimidation, harassment and discrimination were rekindled on October 22, 1997 based on actions of his supervisor. He again concluded that appellant suffered from major depression and was totally disabled from work.⁹ Thus, the Board finds Dr. Cerezo's October 8, 1997 report to be insufficient evidence to warrant a merit review.

Likewise, the medical article submitted by appellant on reconsideration is insufficient to warrant merit review of the record. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.¹⁰ Because the medical article submitted by appellant is not relevant evidence, the Office properly found that appellant failed to meet the requirements of 20 C.F.R. § 10.138.

The Board has consistently held that the only limitation on the Office's authority is reasonableness and abuse of discretion, which is generally shown through proof of manifest error.¹¹ Such was not the case here and the Board finds that the Office properly denied appellant's request for a merit review of his claim.

⁹ Appellant's counsel argues on appeal that Dr. Cerezo's October 8, 1997 report is rationalized compared to his October 26, 1992 report; therefore, appellant is entitled to a merit review based on his submission of new and relevant evidence. The Board, however, rejects such an argument. The Board does not consider the October 8, 1997 report to be rationalized as Dr. Cerezo failed to adequately explain why the onset of appellant's depressive symptoms on or after October 22, 1987 did not constitute an emotional reaction to an entirely new set of circumstances as opposed to a recurrence of disability related to the January 22, 1986 work injury.

¹⁰ *George A. Johnson*, 43 ECAB 712 (1992).

¹¹ *See Daniel J. Perea*, 42 ECAB 214 (1990).

The decision of the Office of Workers' Compensation Programs dated February 11, 1998 is hereby affirmed.

Dated, Washington, D.C.
December 27, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member