

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HENRY J. SMITH and U.S. POSTAL SERVICE,
MANAGEMENT SECTION CENTER, Atlanta, Ga.

*Docket No. 97-587; Submitted on the Record;
Issued February 3, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

The case has been on appeal previously.¹ In a February 27, 1992 decision, the Board noted that appellant sustained a back injury while sorting magazines which the Office of Workers' Compensation Programs accepted for lower back strain and subluxation at L4. The Office subsequently terminated compensation based on the report of Dr. Henry J. Bienert, Jr., a Board-certified orthopedic surgeon, who had been selected as an impartial medical specialist to resolve a conflict in the medical evidence between Dr. Brian M. Bothe, a Board-certified physiatrist, and Dr. Richard Cohen, a Board-certified orthopedic surgeon and Office referral physician, on whether appellant continued to have any employment-related disability. The Board found that Dr. Bienert could not serve as an impartial medical specialist because appellant had not been given notice that Dr. Bienert had been selected to act as an impartial medical specialist to resolve a conflict in the medical evidence. The Board therefore reversed the Office's decision. The Board subsequently denied the Office's petition for reconsideration of its decision.

The Office subsequently referred appellant to Dr. Walter E. Edwards, a Board-certified orthopedic surgeon, for an examination. In a November 19, 1992 report, Dr. Edwards concluded that appellant's disability due to the employment injury had ceased. In a December 10, 1992 decision, the Office again terminated appellant's compensation. In a February 7, 1994 decision, an Office hearing representative found that the Office had again failed to inform appellant that Dr. Edwards was acting as an impartial specialist to resolve the conflict in the medical evidence. The hearing representative therefore reversed the Office's December 10, 1992 decision.

¹ 43 ECAB 524 (1992), *reaff'd on recon.*, 42 ECAB 892 (1992).

In a March 17, 1994 letter, the Office referred appellant to Dr. Julio C. Banderas, a Board-certified orthopedic surgeon, for an examination to resolve a conflict in the medical evidence. In a March 30, 1994 report, Dr. Banderas concluded that appellant had chronic cervical and lumbar syndrome with degenerative disc disease. The Office accepted appellant's condition for aggravation of lumbar disc disease. In a March 28, 1994 report, Dr. Alan B. Lippitt, a Board-certified orthopedic surgeon, indicated that appellant was totally disabled but stated that his disability was caused by conditions which predated his employment injury such as his psychiatric condition, his general physical condition and his gastrointestinal condition.

In a May 12, 1995 letter, the Office referred appellant to Dr. C. William Brown, a Board-certified orthopedic surgeon, for an examination and second opinion on whether appellant's condition was causally related to his employment injury. In a June 23, 1995 report, Dr. Brown stated that appellant's examination was normal. He concluded that appellant had fully recovered from his employment injury. Dr. Brown indicated that appellant had no residual from the employment injury. In a July 5, 1994 report, Dr. Bothe stated that appellant had a combination of lumbar strain and facet joint syndrome and possible lumbar internal degenerative disc disease with intermittent radiculopathy. In a September 14, 1995 decision, the Office terminated appellant's compensation effective September 17, 1995 on the grounds that the weight of the medical evidence established that appellant's employment-related disability ceased no later than that time.

In a June 19, 1996 letter, appellant's attorney requested reconsideration. She submitted in support of the request a May 31, 1996 decision of the Social Security Administration which found appellant to be disabled within the meaning of the Social Security Act since March 8, 1988 due to his post-traumatic stress disorder, panic disorder with agoraphobia, back pain and ulcerative colitis. In a September 4, 1996 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and immaterial and therefore insufficient to warrant review of the prior decision.

The jurisdiction of the Board is limited to final decisions of the Office issued within one year prior to the filing of an appeal with the Board.² As appellant's appeal was filed on November 20, 1996, the Board has jurisdiction to consider only the Office's September 4, 1996 decision.

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

Under 20 C.F.R. §10.138(b)(1), a claimant may obtain review of the merits of his 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 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

² 20 C.F.R. § 501.3(d).

claim.³ 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.⁴ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁵

The only evidence submitted in support of appellant's request for reconsideration was the May 31, 1996 Social Security Administration decision which found appellant to be disabled within the meaning of the Social Security Act. The Board has held that the decision of an administrative law judge that a claimant was disabled under the Social Security Act (SSA) has no evidentiary value in a case under the Federal Employees' Compensation Act (FECA) as the Board has held that entitlement to benefits under one act does not establish entitlement to benefits under the FECA. In determining whether an employee is disabled under the FECA, the findings of the SSA are not determinative of disability under the FECA. The SSA and the FECA have different standards of medical proof on the question of disability. Under the FECA, for a disability determination, a claimant's injury must be shown to be causally related to an accepted injury or factor's of his employment. Under the SSA, conditions which are not work related may be considered in rendering a disability determination.⁶ In this case, the determination that appellant was disabled under the SSA was based on conditions primarily arising from conditions which were not claimed to be or accepted as related to his federal employment, including his psychological conditions, and ulcerative colitis. The decision from the Social Security Administration discussed appellant's claim for a back injury due to his employment and the subsequent termination of his compensation under the FECA. The decision is not dispositive on whether appellant's disability was due to his employment injury but only discussed evidence that had been previously considered by the Office. The decision from the Social Security Administration is therefore irrelevant, immaterial and, in some parts, duplicative of evidence previously considered by the Office. As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.⁷ There is no evidence that the Office's denial of appellant's request for reconsideration constituted an abuse of discretion.

³ 20 C.F.R. § 10.138(b)(2).

⁴ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁵ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁶ *Daniel Deparini*, 44 ECAB 657 (1993).

⁷ *Daniel J. Perea*, 42 ECAB 214 (1990).

The decision of the Office of Workers' Compensation Programs, dated September 4, 1996, is hereby affirmed.

Dated, Washington, D.C.
February 3, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member