

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STANLEY BLANKENSHIP and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Norton, Va.

*Docket No. 97-1193; Submitted on the Record;
Issued January 4, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for merit review on November 15, 1996.

On July 20, 1995 appellant, then a 48-year-old mine inspector and special investigator, filed a notice of traumatic injury alleging that he sustained a myocardial infarction as a result of stress experienced in the course of his federal employment duties.¹ Appellant submitted medical and factual evidence in support of his claim.

In a decision dated September 19, 1995, the Office denied appellant's claim on the grounds that appellant did not submit sufficient medical evidence to establish a causal connection between the accepted stressful employment-related events and appellant's myocardial infarction.²

On November 27, 1995 appellant's counsel requested reconsideration of the Office's September 19, 1995 decision and submitted additional medical evidence in support of his request.³

¹ Appellant stated that approximately 45 minutes prior to his myocardial infarction he had testified in his role as a mine inspector in a criminal sentencing proceeding and had been threatened and berated by family members of the victims as he left the courthouse.

² Dr. Pierre Istfan, appellant's treating physician, stated in a report dated September 9, 1995 that he was unable to say with certainty that job stress had caused appellant's myocardial infarction, but that this could not be ruled out as emotional and physical stress are known to be precipitating factors.

³ In a letter dated November 14, 1995, Dr. Thomas E. Renfro summarized the stressful events at the courthouse on the day of appellant's myocardial infarction and stated, "This stressful situation can predispose individuals with underlying coronary artery disease to develop myocardial infarction which occurred in your situation."

In a merit decision dated February 5, 1996, the Office found the newly submitted evidence to be unexplained and insufficiently rationalized to warrant modification of the prior decision.

By letter dated August 30, 1996, appellant requested reconsideration of the Office's February 5, 1996 decision and submitted additional medical and factual evidence in support of his request.

In a decision dated November 15, 1996, the Office denied appellant's request for reconsideration on the grounds that the newly submitted evidence was of an immaterial nature and therefore was insufficient to warrant review of the prior decision.

The only decision before the Board on this appeal is that of the Office dated November 15, 1996 in which it declined to reopen appellant's case on the merits as he failed to submit new relevant and pertinent evidence or raise legal arguments not previously considered. As more than one year elapsed from the date of issuance of the Office's last merit decision on February 5, 1996 and February 9, 1997, the date of appellant's letter of appeal, the Board lacks jurisdiction to review that decision.⁴

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for merit review on November 15, 1996.

Under section 8128(a) of the Act,⁵ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.138(b)(1) of the implementing federal regulations,⁶ which provides that a claimant may obtain review of the merits of the claim by:

“(i) Showing that the Office erroneously applied or interpreted a point of law; or

“(ii) Advancing a point of law or a fact not previously considered by the Office;
or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.⁷

⁴ See 20 CFR § 501.3(d). Appellant's appeal was received by the Board on February 11, 1997. The envelope containing appellant's appeal does not contain a postmark, but the letter of appeal itself is dated February 9, 1997, which is more than one year after the last Office merit decision.

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.138(b)(1).

⁷ 20 C.F.R. § 10.138(b)(2).

In support of his request for reconsideration, appellant submitted a fitness-for-duty medical report dated May 26, 1994, approximately 14 months prior to his myocardial infarction, and accompanying test results. Appellant noted that while he was found to be in “satisfactory” condition, an electrocardiogram (EKG) tracing obtained as part of the examination contains the notations “abnormal EKG” and “left axis deviation, consider LAFB.” In his letter requesting reconsideration, appellant asserted that these notations establish that the employing establishment knew or should have known of appellant’s heart condition and potential for cardiac arrest. Appellant further asserted that the fact that the employing establishment knew of appellant’s heart condition yet sent him back to work in a stressful situation and did not warn him of the existence of this condition served to establish a causal connection between his employment and his myocardial infarction.” This information, however, is not relevant to the issue for which the Office denied appellant’s claim, the lack of rationalized medical opinion evidence establishing a causal relationship between appellant’s accepted employment conditions and his myocardial infarction. Therefore, it is insufficient to require the Office to reopen appellant’s claim for review of the merits. As appellant failed to submit new relevant and pertinent evidence not previously reviewed by the Office, and failed to raise any error of fact or law in the prior decision, the Office did not abuse its discretion by refusing to reopen appellant’s claim for review of the merits.

The decision of the Office of Workers’ Compensation Programs dated November 15, 1996 is hereby affirmed.

Dated, Washington, D.C.
January 4, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member