

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN E. GOODREAULT and DEPARTMENT OF DEFENSE,
COMMISSARY OFFICE, Fort Drum, N.Y.

*Docket No. 97-2671; Submitted on the Record;
Issued January 14, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's August 19, 1996 request for reconsideration.

On November 10, 1988 appellant, a store worker, sustained an injury while in the performance of his duties.¹ The Office accepted his claim for back spasm. Appellant received continuation of pay on November 11, 1988 and returned to work the following day.

Appellant was involved in an automobile accident on August 8, 1990 when, while stopped at an intersection, he was struck from behind by another vehicle. Appellant filed a claim asserting that he sustained a recurrence of disability on August 8, 1990 causally related to his accepted employment injury of November 1988. He stopped work on October 1, 1990.

On January 13, 1994 his osteopathic physician, Dr. C. Fred Peckham, Jr., reported that appellant gave a history of back pain since the accident of August 8, 1990. Dr. Peckham diagnosed sprains of the lumbar and lumbosacral spine due to instability of the degenerative disc changes at L3-4 and L4-5. "These changes," he reported, "are sequelae of a previous injury. I have no knowledge of a previous date of injury. In my opinion, the original injury left the affected discs less resilient and thus prone to reinjury. Each subsequent injury aggravated this, resulting in his present disability."

In a decision dated May 15, 1995, the Office denied appellant's claim of recurrence on the grounds that the evidence failed to demonstrate a causal relationship between the injury and the claimed condition or period of disability. The Office found that a review of the medical evidence contemporaneous to the date of recurrence gave no support to a relationship between

¹ Appellant has given both November 9 and November 10, 1988 as the date of injury. The record indicates that appellant also sustained an employment injury on July 30, 1988, which the Office accepted for contusions, multiple sites.

the medical conditions found and the accepted injury of November 10, 1988. “The only stated cause for the medical complaints,” the Office noted, “is the auto accident of August 8, 1990.”

Appellant requested a hearing, which was held on May 14, 1996. He submitted a March 29, 1993 report from Dr. Peckham, who reported that appellant’s chance of improvement was very slim and that appellant was permanently and totally unable to work. Appellant also submitted a February 7, 1996 report from Dr. George Mina, an orthopedist, who related a history of the August 8, 1990 automobile accident and noted appellant’s employment injury in 1988. Dr. Mina diagnosed low back pain and stated: “There is a causal relationship between his symptoms and the car accident of August 8, 1990 and also to the injury of 1988.” Dr. Mina also reported: “Apportionment would be 33 percent for the 1988 incident of back pain and 66 percent for the 1990 injury.”

After the hearing, appellant submitted an affidavit from Dr. Peckham, who stated that, despite appellant’s prior injury in 1988, the August 8, 1990 automobile accident had severely aggravated appellant’s back condition. “In this regard,” Dr. Peckham stated, “[appellant’s] present symptoms of pain and discomfort are causally related to the August 8, 1990 automobile accident.”

In a decision dated July 18, 1996, the Office affirmed its May 15, 1995 denial of appellant’s claim. The Office found that appellant’s condition and disability on and after August 8, 1990 was not due to a natural progression of his prior back condition and that the August 8, 1990 automobile accident constituted an independent, intervening, nonindustrial cause of appellant’s condition and disability.

On August 19, 1996 appellant requested reconsideration. In support of this request, he submitted an August 13, 1996 report from Dr. Peckham, who stated as follows: “In my opinion [appellant] is totally disabled. This disability is due to the effects of injuries to his back in 1988 and 1990 and should be apportioned: 1/3 to the 1988 accident and 2/3 to the 1990 accident.”

In a decision dated December 2, 1996, the Office denied appellant’s request on the grounds that the evidence submitted in support thereof was immaterial and repetitious and insufficient to warrant a review of the prior decision.

The Board finds that the Office properly denied appellant’s request for reconsideration.

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.²

Appellant did not show 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. To support

² 20 C.F.R. § 10.138(b)(1).

his request for reconsideration, he submitted a brief report from Dr. Peckham, who merely apportioned appellant's total disability in part to the employment injury of 1988 and in part to the automobile accident of 1990. This two-sentence report is repetitive and cumulative of reports previously of record from Dr. Peckham and Dr. Mina. Moreover, Dr. Peckham did not address the basis of his apportionment, and the Board may not presume or surmise his medical reasoning. Evidence that repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case.³

The December 2, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
January 14, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

³ *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).