U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGORY SULLIVAN and DEPARTMENT OF THE AIR FORCE, NATIONAL GUARD BUREAU, Latham, N.Y.

Docket No. 97-2869; Submitted on the Record;
Issued June 8, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a recurrence of disability on or after January 21, 1996 due to his employment injury, an acute myocardial infarction; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability on or after January 21, 1996 due to his employment injury, an acute myocardial infarction (MI).

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[1]

In the present case, the Office accepted that appellant sustained an employment-related acute MI on January 30, 1990 and was paid appropriate compensation.[2] Appellant claimed that he sustained a recurrence of total disability on January 21, 1996 due to his employment injury. By decision dated June 11, 1996, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence in support thereof. By decision dated September 18, 1996, the Office denied modification of its June 11, 1996 decision and, by decision dated June 12, 1997, the Office denied appellant's request for merit review.

---

[1] *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[2] In March 1990 appellant returned to work for the employing establishment in a light-duty position. Appellant had preexisting coronary artery disease and underwent a coronary angioplasty in July 1991 which was not accepted as employment related.

The Board notes that appellant did not submit sufficient medical evidence to show that he sustained a recurrence of total disability on January 21, 1996 due to his employment injury, an acute MI on January 30, 1990. Appellant submitted a February 5, 1996 report in which a physician at the Hudson Valley Healthcare Association noted, "Coronary angioplasty and stent placement dated January 24, 1996 are directly related to [appellant's] past cardiac history, which has been determined as job related."[3] In a report dated February 22, 1996, a physician at the Hudson Valley Healthcare Association stated, "[Appellant] suffered a myocardial infarction in 1990, his diagnosis at that time was coronary artery disease, angina, and hypertension, which were found to be job related."[4] In addition to the fact that these reports are not signed, they do not contain a clear opinion, based on a complete and accurate medical history, that appellant's employment-related myocardial infarction of January 30, 1990 caused disability on or after January 21, 1996.[5] These reports suggest that appellant's underlying of coronary artery disease has been accepted as employment related; the Office has not accepted this condition as employment related and the medical evidence does not support such a finding. The record does not contain a rationalized medical report relating appellant's condition or disability on or after January 21, 1996 to the accepted employment injury.[6]

The Board further finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[7] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.[8] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[9] When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[10]

---

[3] The report was unsigned but contained the names of three cardiologists at the top -- Drs. Richard S. Cantor, Steven J. Corwin and Franklyn Laifer.

[4] This report was also unsigned and contain the names of the same physicians at the top.

[5] *See William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

[6] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

[7] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

[8] 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

[9] 20 C.F.R. § 10.138(b)(2).

[10] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

In support of his reconsideration request, appellant submitted an April 7, 1997 letter in which he asserted that his MI was employment related and therefore he should receive continuing benefits. The submission of this argument, however, is not sufficient to require reopening of appellant's claim in that it is not relevant to the main issue of the present case, *i.e.*, whether appellant submitted adequate medical evidence to show that he sustained a recurrence of disability on or after January 21, 1996 due to his employment injury, an acute MI. This issue is medical in nature and should be resolved by the submission of relevant medical evidence. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[11]

In the present case, appellant has not established that the Office abused its discretion in its June 12, 1997 decision by denying his request for a review on the merits of its September 18, 1996 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, that he advanced a point of law or a fact not previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office.

The decisions of the Office of Workers' Compensation Programs dated June 12, 1997 and September 18, 1996 are affirmed.[12]

Dated, Washington, D.C.
June 8, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[11] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

[12] On appeal to the Board, appellant stated, "I am appealing the decision requesting that my retirement disability be changed from Office of Personnel Management benefits to Office benefits." The Board notes, however, that the Act is not a retirement plan and the Office provides compensation for disability and medical expenses shown to be due to employment-related injuries.