

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM P. RASLAWSKY and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Buffalo, NY

*Docket No. 97-2382; Submitted on the Record;  
Issued October 27, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

On December 30, 1994 appellant, then a 46-year-old custodial worker, filed an occupational disease claim alleging that he was exposed to the Epstein-Barr virus on January 1, 1992 when medical waste splashed into his mouth at work and sustained a medical condition as a result of this exposure.

By decisions dated March 15 and July 28, 1995, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that he sustained a medical condition causally related to the incident when waste materials splashed into his mouth.

By decision dated May 3, 1996, an Office hearing representative affirmed the Office's March 15 and July 28, 1995 decisions, on the grounds that the evidence of record failed to establish that appellant's diagnosed cancer was causally related to his work duties in general or to the specific incident on May 19, 1991.

On March 10, 1997 appellant, through his representative, requested reconsideration of the denial of his claim and submitted additional evidence.<sup>1</sup>

In a letter dated February 12, 1997, Robert Barksdale, Jr., a supervisor, related that appellant spent most of his time working in the sub-basement pulling trash from the trash chutes. He stated that it was a common occurrence for plastic tubing with blood and other liquids to be

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<sup>1</sup> Appellant also submitted materials which was received by the Office on June 4, 1997. These materials were not before the Office at the time it issued its May 29, 1997 decision and, therefore, the Board has no jurisdiction to review this material for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

thrown down the chutes. Mr. Barksdale stated that he remembered appellant being splashed with fluids from the chutes and that he sent him to the emergency room for treatment.

In a letter dated February 17, 1994, appellant's ex-wife related that she was present when appellant was told by Dr. S. Jain that he had the Epstein-Barr virus.

Appellant also submitted copies of pages from medical texts.

By decision dated May 29, 1997, the Office denied appellant's request for further merit review of his claim.<sup>2</sup>

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

Section 10.138(b)(1) 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.<sup>3</sup> 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 requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>4</sup>

In this case, appellant alleged that he sustained a medical condition due to exposure to the Epstein-Barr virus at work when medical waste splashed into his mouth.

In a letter dated February 12, 1997, Mr. Barksdale stated that appellant spent most of his time working in the sub-basement pulling trash from the trash chutes. He stated that it was a common occurrence for plastic tubing with blood and other liquids to be thrown down the chutes. Mr. Barksdale stated that he remembered appellant being splashed with fluids from the chutes and that he sent him to the emergency room for treatment. In a letter dated February 17, 1994, appellant's ex-wife related that she was present when appellant was told by Dr. Jain that he had Epstein-Barr virus. These letters do not constitute pertinent and relevant evidence not previously considered by the Office as the issue upon which the claim was denied was a medical issue and these letters do not constitute medical reports from a physician.

Appellant also submitted copies of pages from medical texts. However, excerpts from medical books do not address the specific medical issue in appellant's case and, therefore, this evidence does not constitute relevant and pertinent evidence not previously considered by the Office.

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<sup>2</sup> The Board notes that this case record contains documents belonging to another claimant. Upon return of the case record, the Office should place these documents in the correct file.

<sup>3</sup> 20 C.F.R. § 10.138(b)(1).

<sup>4</sup> 20 C.F.R. § 10.138(b)(2).

As appellant did not submit pertinent and relevant evidence not previously considered by the Office, did not show that the Office erroneously applied or interpreted a point of law and did not advance a point of law or a fact not previously considered by the Office, the Office did not abuse its discretion in denying appellant's request for reconsideration.

The May 29, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

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

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member