

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GREGORY WINE and DEPARTMENT OF THE ARMY,  
PINE BLUFF ARSENAL, Pine Bluff, AR

*Docket No. 99-1779; Submitted on the Record;  
Issued August 14, 2000*

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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 by refusing to reopen appellant's claim for a merit review on February 4, 1999.

On April 22, 1992 appellant, then a 39-year-old munitions handler, filed a notice of occupational disease alleging that he suffered paronyclun, a fungal disease, as a result of his federal employment. On September 11, 1992 the Office accepted the claim for paronychia of the right fingers and awarded appropriate compensation.

Appellant subsequently asserted that he developed impotency stemming from his treatment of the drug Nizoral for his accepted injury.

By decision dated September 5, 1996, the Office rejected appellant's claim that he suffered impotency due to his accepted injury.

On September 27, 1996 appellant requested an oral hearing, which was held on December 8, 1997.

Appellant subsequently submitted a June 30, 1993 report from Dr. Hope Gibson, a psychiatrist, diagnosing a recurrent major depressive disorder and a fungal infection of the fingernail. Appellant also submitted a January 23, 1997 report from Dr. Douglas A. Stevens, a clinical psychologist, diagnosing a major depression with psychotic features, schizoid personality traits and paronychia. Although Dr. Stevens recorded an extensive history and conducted psychological testing, he did not provide a medical explanation addressing why appellant's diagnosed conditions stemmed from his employment.

By decision dated January 22, 1998, the Office hearing representative affirmed the Office's April 15, 1996 decision denying appellant's claim for impotency and penile implants and his claim for depression. The hearing representative, however, accepted that the accepted employment condition temporarily lowered appellant's testosterone and libido.

On January 22, 1999 appellant's representative requested reconsideration, urging that the medical evidence of record established that appellant's depression stemmed from his accepted injury. In support, he resubmitted Dr. Gibson's June 30, 1993 report and submitted a January 2, 1997 report from Dr. Evans, which repeated the conclusions he made in his previously submitted January 23, 1997 report.

By decision dated February 4, 1999, the Office declined to reopen the case for a merit review because appellant's letter requesting reconsideration neither raised substantive legal questions nor included new and relevant evidence.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for a merit review on February 4, 1999.

The only decision before the Board on this appeal is the February 4, 1999 decision of the Office, which found that appellant failed to submit sufficient evidence to warrant review of its previous decision. Since more than one year has elapsed between the issuance of the other decisions of record and May 13, 1999, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the other decisions of record.<sup>1</sup>

Under section 8128(a) of the Federal Employees' Compensation Act,<sup>2</sup> 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 10.606(b)(2) of the implementing federal regulations,<sup>3</sup> which provides that a claimant may obtain review of the merits if his written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence as follows:

“(i) Showing that OWCP erroneously applied or interpreted a specific point of law; or

“(ii) Advancing a relevant legal argument not previously considered by OWCP; or

“(iii) Constituting relevant and pertinent new evidence not previously considered by the Office.

Section 10.608(b) provides that any application for review of the merits of the claim, which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>4</sup>

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<sup>1</sup> 20 C.F.R. § 501.3(d)(2).

<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.606(b) (1999).

<sup>4</sup> 20 C.F.R. § 10.608(b).

In support of his request for reconsideration dated January 22, 1999, appellant's representative failed to make any new legal arguments and he failed to submit any relevant and pertinent new evidence not previously considered by the Office. In this regard, appellant's representative merely reargued that the medical evidence established that appellant's depression stemmed from his accepted employment injury. Moreover, the Office previously considered Dr. Gibson's June 30, 1993 report that appellant's representative submitted on reconsideration. In addition, Dr. Steven's January 2, 1997 report cannot be considered new evidence because the report merely repeats the conclusions made by this physician in his previously considered January 23, 1997 report. The Office, therefore, properly refused to reopen appellant's claim for a merit review.

The decision of the Office of Workers' Compensation Programs dated February 4, 1999 is affirmed.

Dated, Washington, D.C.  
August 14, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member