

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM L. WHATMOUGH and DEPARTMENT OF VETERANS
AFFAIRS, MEDICAL CENTER, Gainesville, FL

*Docket No. 98-1844; Submitted on the Record;
Issued February 4, 2000*

DECISION and ORDER

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

The issues are: (1) whether appellant has established total disability on or after August 20, 1997, causally related to his employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

In the present case, the Office accepted that appellant sustained cervical and lumbar strains, as well as aggravation of degenerative disc disease, in the performance of duty.¹ Appellant stopped working in February 1994 and returned to a part-time position in December 1996. By decision dated March 20, 1997, the Office reduced appellant's compensation to reflect his wage-earning capacity in the position.

Appellant stopped working on August 20, 1997 and filed a claim for continuing compensation (Form CA-8). In a decision dated February 27, 1998, the Office denied appellant's claim for total disability commencing August 20, 1997.

In a decision dated May 6, 1998, the Office determined that the evidence submitted with appellant's request for reconsideration was repetitious and not sufficient to warrant review of the prior decision.

The Board has reviewed the record and finds that the Office properly denied appellant's claim for compensation commencing August 20, 1997.

Once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was, in fact, erroneous.² The burden of proof is on

¹ The Office accepted traumatic injuries on November 25, 1992 and October 4, 1993.

² *Sue A. Sedgwick*, 45 ECAB 211 (1993).

the party attempting to show a modification of the wage-earning capacity determination.³ The Board also notes that 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 establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.⁴

In the present case, appellant submitted a note dated August 20, 1997, from Dr. Philip K. Springer, a psychiatrist and specialist in pain management, stating that appellant was temporarily totally disabled as a result of complications of his employment injury. Dr. Springer did not provide further detail. The Board has noted that in assessing medical evidence the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵ In a CA-20 form report dated August 20, 1997, Dr. Springer diagnosed depression, hypertension, chronic pain disorder, low back and neck pain. He checked a box "yes" that the conditions were causally related to employment, noting "long hours on feet" and "driving to and from work very stressful."⁶ The Board notes that the employing establishment asserted that appellant's light-duty position was sedentary and did not require long hours of standing. Moreover, Dr. Springer did not provide a complete background or a reasoned opinion establishing total disability commencing August 20, 1997 as causally related to appellant's federal employment.

In a report dated August 21, 1997, Dr. Springer stated that appellant was totally disabled "due to the work injury he suffered in 1992. The injury left him with pain in his low back and neck. He also developed severe hypertension. [Appellant] is not able to work due to the high levels of pain he is experiencing. As the pain levels increase, so does his blood pressure." Dr. Springer's report is again of limited probative value to the issue presented in that he does not provide a complete background, and he does not clearly explain how appellant's employment-related condition worsened on August 20, 1997 and resulted in total disability.⁷ In the absence of probative and reliable medical evidence, the Board finds that the February 27, 1998 Office decision properly determined that appellant had not established entitlement to compensation for total disability commencing August 20, 1997.

³ *Id.*

⁴ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁵ *Gary R. Sieber*, 46 ECAB 215 (1994).

⁶ The checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship; see *Barbara J. Williams*, 40 ECAB 649, 656 (1989).

⁷ To the extent that Dr. Springer opines that the hypertension is causally related to the employment injury, he does not provide sufficient medical reasoning to establish causal relationship.

The Board further finds that the Office abused its discretion in refusing to reopen the case for merit review.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁸ the Office's 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 fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁹ Section 10.138(b)(2) states that any application for review that does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.¹⁰

In the present case, appellant requested reconsideration of his claim and the evidence submitted included a report dated February 19, 1998 from Dr. Springer. He stated that appellant was suffering from chronic pain caused by the work-related accident in 1992 and further stated, "In addition to severe pain and high levels of medication use, [appellant] also suffers from major depression which is directly related to the decrease in functionality caused by the pain." Although Dr. Springer had previously submitted reports describing treatment for an emotional condition, this is the first time he provided an opinion that the emotional condition was a consequence of the employment injury. It is, therefore, new, and relevant evidence and under section 10.138(b)(1), it is sufficient to require the Office to reopen the case for merit review. Accordingly, the case will be remanded to the Office for a decision on the merits of the claim.

⁸ 5 U.S.C. § 8128(a) (providing that "[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)."

⁹ 20 C.F.R. § 10.138(b)(1).

¹⁰ 20 C.F.R. § 10.138(b)(2); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

The decision of the Office of Workers' Compensation Programs dated February 27, 1998 is affirmed and the decision dated May 6, 1998 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
February 4, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member