

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSE A. ROBLES-TORRES and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, San Juan, PR

*Docket No. 99-1233; Submitted on the Record;
Issued June 23, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
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 July 6, 1998.

On May 21, 1992 appellant, then a 41-year-old maintenance worker, filed a notice of occupational disease alleging that he suffered undifferentiated schizophrenia as a result of finding a patient who hanged himself on August 30, 1976. On July 23, 1992 the Office accepted the claim for a temporary acute stress reaction. The Office explained that it was not accepting any disability from employment and, that the evidence only supported that appellant suffered a temporary acute stress reaction in 1976 with no lost time from work and no residual symptoms. It stated that, to reopen the case, appellant should submit a full narrative medical report with an explanation as to how any current conditions related to the 1976 incident.

In October 1992 and 1993, Dr. Gerardo Sanz Ortega, a psychiatrist, noted appellant's history, including the fact that he witnessed the results of a hanging in 1979 to 1980. He also indicated that appellant's condition was worsened by a change in working hours, which resulted in him getting home late. Dr. Sanz diagnosed chronic undifferentiated schizophrenia and stated that appellant's illness continued to worsen.

On April 22, 1993 appellant filed a claim for compensation, Form CA-7, for the period October 28, 1991 through April 26, 1993.

By decision dated October 25, 1994, the Office rejected appellant's claim because the evidence failed to demonstrate a causal relationship between the injury and the claimed condition of disability. In an accompanying memorandum, the Office stated that the issue was whether the claimed recurrence of disability on or after October 28, 1991 was related to the injury of August 30, 1976. The Office noted that appellant submitted an October 1992 report from Dr. Sanz, but that it was entitled to little weight because he failed to explain how

appellant's present condition was related to the accepted August 30, 1976 injury and he provided an inaccurate date for the occurrence of the accepted injury.

On November 16, 1994 appellant requested reconsideration.

By decision dated January 12, 1995, the Office indicated that because appellant's letter requesting reconsideration neither raised substantive legal questions, nor included new and relevant evidence that it is insufficient to warrant a review of its prior decision.

On March 17, 1995 appellant appealed to the Board. In his appeal, appellant indicated that he paid \$1,000.00 to obtain a report from Dr. Arnaldo Cruz-Igartua, a Board-certified psychiatrist and neurologist.

By decision dated April 2, 1997, the Board affirmed the Office's October 25, 1994 decision denying benefits.¹ In particular, the Board noted that appellant's change in working hours constituted a noncompensable factor of employment.

On April 23, 1997 appellant requested reconsideration. In support, he submitted a January 15, 1995 report from Dr. Cruz. He indicated that appellant heard voices telling him to kill himself and that he saw moving images. Dr. Cruz stated that appellant had body movements, anxiety, disorientation and insomnia. He stated that appellant was in normal health until he witnessed the results of a hanging in 1975. Dr. Cruz reviewed appellant's medical history and noted that a change in his job worsened his condition in 1991 because arriving home late made him anxious. He interviewed two of appellant's coworkers and noted that they reported witnessing appellant's symptoms. Dr. Cruz reviewed the psychological evaluation of Dr. Elba Colon, a clinical psychologist, in which appellant's symptoms were restated and a diagnosis of schizophrenia and major depression was made. He indicated that appellant's symptomology was demonstrated on examination. Dr. Cruz diagnosed a chronic major mental disorder since 1975, which had progressively deteriorated. He stated that appellant's thoughts and hallucinations were always related to death and the original trauma of seeing a hanged patient. Dr. Cruz further stated that the change in working hours precipitated total incapacity in 1991. He stated that medication improved appellant's symptoms, but that he remained totally disabled. Dr. Cruz diagnosed chronic undifferentiated schizophrenia and depression.

By decision dated June 23, 1997, the Office found that the evidence submitted in support of the request for review was cumulative and insufficient to warrant review of its prior decision. In this regard, the Office indicated that Dr. Colon failed to provide an opinion which addressed whether appellant's present condition was related to his August 1976 injury and that Dr. Cruz provided an opinion substantially similar to Dr. Sanz's opinion because he related appellant's present condition to a noncompensable factor of employment, the change in his working hours.

On April 27, 1998 appellant again requested reconsideration. In support, he submitted an April 20, 1998 report from Dr. Cruz in which he explained portions of his earlier report. In this regard, he noted that appellant had not paid him for the examination and that appellant began

¹ Jose A. Robles-Torres, Docket No. 95-1683 (April 2, 1997) (unpub).

psychiatric treatment elsewhere in 1975. Dr. Cruz indicated that he was aware that appellant's traumatic incident occurred on August 30, 1976 and that his working hours were changed on September 9, 1991. He stated that he believed that appellant arrived home after dark due to the traffic involved. Dr. Cruz opined that the traumatic event of August 30, 1976 aggravated his mental disorder activating a full psychotic syndrome with auditory hallucinations and flashbacks. He again indicated that the change in working hours in 1991 precipitated his total disability. Dr. Cruz concluded that there was enough evidence for a causal aggravation of a preexisting condition by these stressors to make appellant unable to work beginning in 1991.

By decision dated July 6, 1998, the Office indicated that appellant's request for reconsideration was insufficient to warrant a merit review of its prior decision. In this regard, the Office indicated that Dr. Cruz's April 20, 1998 medical report was repetitious.

The only decision before the Board on this appeal is that of the Office dated July 6, 1998 in which it declined to reopen appellant's case on the merits as he failed to submit new relevant and pertinent evidence. Since more than one year elapsed from the date of issuance of the Office's June 23, 1997 decision to the date of filing of appellant's appeal, on February 4, 1999, the Board lacks jurisdiction to review that decision.²

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for merit review on July 6, 1998.

Under section 8128(a) of the Federal Employees' Compensation Act,³ 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 10.138(b)(1) of the implementing federal regulations,⁴ which provides that a claimant may obtain review of the merits of the claim by:

“(i) Showing that the Office erroneously applied or interpreted a point of law; or

“(ii) Advancing a point of law or a fact not previously considered by the Office;
or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.⁵

² See 20 C.F.R. § 501.3(d).

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.138(b)(1).

⁵ 20 C.F.R. § 10.138(b)(2).

Appellant requested reconsideration on April 27, 1998 and submitted an April 20, 1998 report from Dr. Cruz, a Board-certified psychiatrist and neurologist. His April 20, 1998 report contains numerous clarifications of his previously submitted January 15, 1995 report. Despite the factual and medical clarifications, however, Dr. Cruz merely repeats his prior conclusion made in the January 15, 1995 report that appellant suffered schizophrenic symptoms following the August 30, 1976 hanging incident and that he became totally incapacitated following a change in his working hours which resulted in him coming home late in 1991. The Office considered Dr. Cruz's January 15, 1995 conclusions in its June 23, 1997 decision and found that they were cumulative of Dr. Sanz's opinion, relating appellant's condition to a change in working hours, a noncompensable factor of employment. It, therefore, declined to reopen appellant's case. In the present case, Dr. Cruz's April 20, 1998 opinion again repeats conclusions already found insufficient to reopen the record. Consequently, Dr. Cruz's April 20, 1998 report constitutes cumulative medical evidence, which is insufficient to reopen the record for a merit review.

As appellant failed to submit any new relevant and pertinent evidence, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

The decisions of the Office of Workers' Compensation Programs dated July 6, 1998 is hereby affirmed.

Dated, Washington, D.C.
June 23, 2000

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member