U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD HOLBROOK and DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, Neopit, WI

Docket No. 98-439; Submitted on the Record;
Issued March 6, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of October 7, 1996; (2) whether the Office abused its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

On February 27, 1996 appellant, a 36-year-old logger/skidder, injured his lower back when he fell and landed on his back. Appellant filed a claim for benefits on March 4, 1996, which the Office accepted for lumbar strain. The Office paid appellant temporary total disability compensation for appropriate periods and placed him on the periodic rolls. Appellant has not returned to work with the employing establishment since his employment injury.

In a report dated June 7, 1996, appellant's treating physician, Dr. Richard L. Buechel, a Board-certified orthopedic surgeon, stated that x-rays of appellant's lumbosacral spine showed evidence of spondylolysis of the L5 vertebra, which was probably preexisting, but was aggravated by the February 27, 1996 employment injury. In a report dated June 24, 1996, Dr. Buechel stated that appellant underwent a magnetic resonance imaging (MRI) scan, which revealed evidence of degenerative disc disease at L5-S1. He advised that appellant was unable to do his regular job as a skidder and recommended that appellant be returned to some type of gainful employment. Dr. Buechel advised that, if appellant attempted to perform light work with restrictions on lifting more than 40 pounds, climbing on and off a skidder and using a power saw or chain saw, he might be able to obtain some type of gainful employment.

In order to clarify appellant's current condition, the Office scheduled a second opinion examination for appellant with Dr. James G. Gmeiner, a Board-certified orthopedic surgeon, who examined appellant on October 7, 1996.

In a report dated October 16, 1996, Dr. Gmeiner, after reviewing appellant's medical records, the statement of accepted facts and stating findings on examination, stated that the

work-related injury, which occurred on February 27, 1996, was consistent with a soft tissue sprain/strain to the thoracic and lumbar spine. He found appellant to be neurologically intact during his examination. Dr. Gmeiner concluded that appellant had resolved soft tissue strains of the lumbar and thoracic spine with no objective findings on the physical examination to warrant work restrictions and no residuals from the February 27, 1996 employment injury and found that no further treatment was indicated. He concurred in the diagnoses of spondylolysis at L5-S1, but found based on the results of the MRI that this condition preexisted the work injury. Dr. Gmeiner stated that his physical examination indicated appellant's spondylolysis was not a contributory component to his symptomatology and was not accelerated, aggravated, or precipitated by the February 27, 1996 employment injury.

By decision dated October 29, 1996, the Office terminated appellant's compensation, finding that Dr. Gmeiner's opinion, that appellant had no residuals from his February 27, 1996 employment injury represented the weight of the medical evidence.

By letter dated November 25, 1996, appellant requested a review of the written record. In support of his claim, appellant submitted October 2 and November 11, 1996 reports from Dr. Buechel and an October 29, 1996 report from Dr. Timothy C. Romang, a specialist in physical medicine and rehabilitation. In his reports, Dr. Buechel essentially reiterated his earlier findings and conclusions and advised in his October 2, 1996 report that appellant was still disabled for work because he was unable to perform his preinjury job as a logger and light duty was not available to him. Dr. Romang indicated findings on examination and stated that appellant had chronic low back pain related to the February 27, 1996 employment injury with bilateral spondylolysis at L5.

By decision dated March 14, 1997, the Office found that the evidence appellant submitted was not sufficient to warrant modification of its October 29, 1996 termination decision.

By letter dated August 6, 1997, appellant's attorney requested reconsideration.

By decision dated August 26, 1997, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits as of October 7, 1996.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[1] After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[2]

[1] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[2] *Id.*

In the present case, the Office properly based its decision to terminate appellant's compensation on the October 16, 1996 medical report of Dr. Gmeiner, who advised that appellant had no objective findings on the physical examination to warrant work restrictions and had no residuals attributable to the February 27, 1996 employment injury. Dr. Gmeiner concurred with previous diagnoses that appellant had spondylolysis at L5-S1, but found that it preexisted the February 27, 1996 employment injury, did not contribute to his symptomatology and was not aggravated by the employment injury. Therefore, as the Office properly based its termination decision on Dr. Gmeiner's well-rationalized opinion that there were no objective findings of residuals from his accepted employment, the Board affirms the Office's October 29, 1996 termination decision.

Subsequent to the Office's October 29, 1996 termination decision, the burden of proof in this case shifted to appellant, who thereafter, submitted reports from Dr. Buechel and Dr. Romang. These reports, however, did not contain countervailing, probative medical evidence that appellant continued to have residual disability from his accepted employment injury. The reports from these physicians are of limited probative value in that they did not provide adequate medical rationale in support of their conclusions.[3] They are of limited probative value for the reason that they are generalized in nature and equivocal in that they only noted summarily that appellant's low back pain and preexisting spondylolysis were causally related to the February 27, 1996 employment injury. Thus, the reports from Dr. Buechel and Dr. Romang did not satisfy appellant's burden of proof to submit medical evidence sufficient to warrant modification of the Office's October 29, 1996 termination decision. Accordingly, the Board affirms the May 14, 1997 decision of the Office hearing representative, affirming the Office's October 29, 1996 termination decision.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law; by advancing a point of law or fact not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.[4] 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 three requirements, the Office will deny the application for review without reviewing the merits of the claim.[5] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[6]

In the present case, appellant has not shown that the Office erroneously applied or interpreted a point of law; he has not advanced a point of law or fact not previously considered

[3] *William C. Thomas,* 45 ECAB 591 (1994).

[4] 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128(a).

[5] 20 C.F.R. § 10.138(b)(2).

[6] *Howard A. Williams,* 45 ECAB 853 (1994).

by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. All of the medical evidence submitted by appellant was previously of record and considered by the Office in reaching prior decisions. Thus, his request did not contain any new and relevant medical evidence for the Office to review. This is important since the outstanding issue in the case -- whether appellant had any residuals from his February 27, 1996 work-related low back injury -- is medical in nature. Additionally, appellant's August 6, 1997 letter did not show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Although appellant's attorney generally contended that he continued to have low back pain causally related to the February 27, 1996 employment injury, he failed to submit new and relevant medical evidence in support of this contention. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

The decisions of the Office of Workers' Compensation Programs dated August 26 and March 14, 1997 and October 29, 1996 are hereby affirmed.

Dated, Washington, D.C.
March 6, 2000

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member