

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROY L. PANKEY and TENNESSEE VALLEY AUTHORITY,
WATTS BAR NUCLEAR PLANT, Spring City, TN

*Docket No. 99-2; Submitted on the Record;
Issued March 20, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on June 2, 1997.

The Board has duly reviewed the case on appeal and finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits on June 2, 1997.

This is the sixth appeal in this case. By decision dated January 29, 1988,¹ the Board found that appellant's cervical disability causally related to his December 27, 1972 employment injury had ceased after December 3, 1982 and that the Office had met its burden of proof to terminate appellant's compensation benefits as of that date.² The Board found, in a decision dated June 21, 1993,³ that appellant had not establish that he had any disability causally related to his December 27, 1972 employment injury after December 3, 1982, and that the Office did not abuse its discretion in denying appellant's applications for review on September 18 and December 9, 1991. In its February 6, 1997 decision,⁴ the Board found that the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits on February 10, March 8 and November 2, 1994.⁵

¹ Docket No. 88-51.

² The Board addressed procedural issues in appellant's claim in decisions dated May 16, 1990, Docket No. 90-876 and February 13, 1991, Docket No. 90-1880.

³ Docket No. 92-694.

⁴ Docket No. 95-731.

⁵ The facts and circumstances of the case are set out in the prior decisions and adopted herein by reference.

Appellant requested reconsideration on May 28, 1997 and submitted a report from Dr. Walter H. King, Jr., a Board-certified orthopedic surgeon, dated March 31, 1997. By decision dated June 2, 1997, the Office denied appellant's request for reconsideration finding that he failed to submit relevant new evidence as Dr. King's report was substantially similar to others already included in the record.

Section 10.138(b)(1) of Title 20 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.⁶ 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.⁷

In this case, the Board found in its June 21, 1993 decision,⁸ that appellant had failed to submit the necessary rationalized medical opinion evidence to establish a causal relationship between his 1972 employment injury and any continuing cervical or lumbar spine conditions based on the reports from Dr. King. In support of his most recent reconsideration request, appellant submitted a report from Dr. King dated March 31, 1997. Dr. King stated that appellant had a cervical and lumbar spine injury that was related to his original problem in 1972. He stated, "As far as I am concerned and according to the medical evidence, this man's injury is all related to his 1972 injury plus whatever he received in 1986." He further stated, "In reviewing this man's x-rays there is no question that his cervical and lumbar injuries are related to his original injury."

This report is not sufficient to require the Office to reopen appellant's claim for consideration of the merits as it is similar to other reports submitted by Dr. King which provide an opinion that appellant's current conditions are related to his accepted employment injury without providing any medical rationale in support of this opinion. Although Dr. King indicates that he relied on objective findings, in this instance x-rays, in reaching his conclusion, he again failed to provide any specific findings or reasoning as to why he believes that the changes evident on x-ray were caused by the 1972 employment injury. As appellant has failed to submit any new or relevant evidence not previously considered by the Office, the Office did not abuse its discretion in refusing to reopen appellant's claim for consideration of the merits.

⁶ 20 C.F.R. § 10.138(b)(1).

⁷ 20 C.F.R. § 10.138(b)(2).

⁸ Docket No. 92-694.

The June 2, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
March 20, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member