

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MELVIN C. GOSA and DEPARTMENT OF VETERANS AFFAIRS,
TUSCALOOSA VETERANS ADMINISTRATION MEDICAL CENTER,
Tuscaloosa, AL

*Docket No. 99-594; Submitted on the Record;
Issued May 17, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly found that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly determined that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

The Office accepted appellant's claim for multiple contusions and a cervical strain. By decision dated December 16, 1993, the Office denied his claim for a recurrence of disability commencing November 5, 1991 causally related to the February 23, 1991 employment injury. By letter dated June 28, 1994, appellant requested reconsideration of the Office's decision. By decision dated September 16, 1994, the Office denied his request for modification.

By letter dated September 10, 1998, which was received by the Office on September 16, 1998, appellant requested reconsideration of the Office's decision and submitted evidence consisting of a duty status report, Form CA-17, medical notes from Dr. Timothy D. Bassett, a Board-certified orthopedic surgeon, dated June 2 and September 20, 1995 and a hearing transcript dated November 17, 1997 related to his claim for a work-related psychological condition, No. 06-0645833, which is separate from this claim. He also submitted progress notes from Dr. Peter G. Casten, a Board-certified internist and preventive medicine specialist, dated November 25 and December 30, 1997, a medical report from Dr. John R. Goff, a clinical neuropsychologist, dated March 17, 1998 and a physical capacities evaluation dated April 8, 1998 from Vernon L. Scott, a Board-certified family practitioner.

By decision dated November 5, 1998, the Office denied appellant's reconsideration request as untimely and found that the evidence submitted presented no clear evidence of error on the part of the Office.

The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).¹ The Office will not review a decision denying or terminating benefits unless the application for review is filed within one year of the date of that decision.² When an application for review is untimely, the Office takes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.³

The Board finds that, since more than one year had elapsed since the date of issuance of the Office's September 16, 1994 merit decision to the date that appellant's request for reconsideration was filed, September 16, 1998, appellant's request for reconsideration is untimely. Moreover, the Board further finds that the evidence submitted by appellant in support of such request does not raise a substantial question as to the correctness of the Office's September 16, 1994 merit decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim. In this regard, none of the medical evidence appellant submitted contains the requisite rationalized medical opinion establishing a causal relationship between the alleged recurrence of disability commencing November 5, 1991 and the February 23, 1991 employment injury.⁴ The August 25, 1993 duty status report described appellant's history of injury, indicated the date of injury was August 25, 1993, contained a diagnosis of low back strain and post cervical fusion and indicated that his condition was consistent with the history of injury, but contains no rationalized medical opinion explaining how appellant's current condition resulted from the alleged November 5, 1991 recurrence of disability. Dr. Bassett's medical notes dated June 2 and September 20, 1995 which state that appellant can perform light work with restrictions and has cervical myelopathy do not contain any opinion on causation and therefore are not probative.

Dr. Casten's progress reports dated November 5 and December 30, 1997 describe two surgeries appellant underwent on his neck on May 17 and July 3, 1991 after his February 23, 1991 employment injury at work, provide a diagnosis of chronic neck pain and pain in the upper and lower back and extremities, an impairment rating of 18 percent pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1994) and recommend restrictions.⁵ However, they do not contain a rationalized medical opinion on

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.138(b)(2); *see also Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

³ *Thankamma Matthews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

⁴ *See Dominic M. DeScala*, 37 ECAB 369 (1986).

⁵ In view of appellant's submission of medical reports dated November 5 and December 30, 1997 revealing an 18 percent permanent impairment pursuant to the A.M.A., *Guides*, he may wish to file a claim with the Office for a schedule award.

causation and therefore are not probative. The hearing transcript for appellant's claim for a work-related psychological injury, No. 06-0645833, and Dr. Goff's March 17, 1998 report a

ddressing appellant's psychological condition are not relevant to appellant's claim for recurrence of disability due to the accepted injury of multiple contusions and cervical neck strain. Further, Dr. Scott's April 8, 1998 physical capacities evaluation described appellant's work restrictions but did not address causation.

As appellant has not, by the submission of factual and medical evidence, raised a substantial question as to the correctness of the Office's September 16, 1994 decision, he has failed to establish clear evidence off error and the Office did not abuse its discretion in denying a merit review of his claim.

The decision of the Office of Workers' Compensation Programs dated November 5, 1998 is hereby affirmed.

Dated, Washington, D.C.
May 17, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member