U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HENRY TURNER and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, CA

Docket No. 98-1497; Submitted on the Record;
Issued November 28, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant had disability after April 23, 1996 due to his employment injury, post-traumatic stress syndrome; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board finds that appellant did not have disability after April 23, 1996 due to his employment injury, post-traumatic stress syndrome.

In December 1990, the Office accepted that appellant, then a 41-year-old mark-up clerk, sustained employment-related post-traumatic stress syndrome.[1] By decision dated April 23, 1996, the Office terminated appellant's compensation effective April 27, 1996 on the grounds that he had no employment-related disability after that date. The Office based its termination on the February 28, 1996 report of Dr. William J. Sullivan, the Board-certified psychiatrist who served as an Office referral physician. By decisions dated October 30, 1996 and April 4, 1997, the Office denied modification of its April 23, 1996 decision. By decision dated March 30, 1998, the Office denied appellant's request for merit review.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[2] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[3] After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to

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[1] The Office accepted that this condition was caused by various employment factors.

[2] *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

[3] *Id.*

prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.[4]

The Board notes that the Office met its burden of proof to terminate appellant's compensation effective April 27, 1996 by determining that the weight of the medical evidence rested with the well-rationalized opinion of the Office referral physician, Dr. Sullivan.

In his report dated February 28, 1996 report, Dr. Sullivan determined that appellant no longer suffered residuals of his employment-related emotional condition, post-traumatic stress syndrome. Dr. Sullivan provided a detailed description of his evaluation and appellant's extensive factual and medical history. He indicated that appellant's continuing problems were due to a nonwork-related chronic paranoid schizophrenia condition. Dr. Sullivan noted that appellant exhibited two or more of the following signs of schizophrenia for more than one month: delusions, hallucinations, disorganized speech, disorganized behavior and flattening of effect. He indicated that appellant's schizophrenia was genetically determined and familial in nature and stated that his psychiatric condition was in no way related to a reaction to his employment. Dr. Sullivan noted that appellant's current condition would have developed regardless of his employment exposure. He indicated that his evaluation did not show that appellant had any continuing post-traumatic stress disorder and that such a diagnosis was "completely inapplicable" to his continuing condition.[5]

The Board has carefully reviewed the opinion of Dr. Sullivan and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Sullivan's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence.[6] Dr. Sullivan provided medical rationale for his opinion by explaining that appellant did not exhibit continuing signs of the accepted employment-related emotional condition and that his continuing condition could be explained by a nonwork-related emotional condition.

After the Office's April 23, 1996 decision terminating appellant's compensation effective April 27, 1996, appellant submitted additional medical evidence, which he felt showed that he was entitled to compensation after April 27, 1996 due to residuals of his employment injury. Given that the Board has found that the Office properly relied on the opinion of Dr. Sullivan in terminating appellant's compensation effective April 27, 1996, the burden shifts to appellant to establish that he is entitled to compensation after that date. The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that he had residuals of his employment injury after April 27, 1996.

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[4] *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

[5] The record does not contain any notable reports of appellant's attending physicians from around the time of Dr. Sullivan's evaluation.

[6] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

Appellant submitted a January 15, 1997 report, in which Dr. Thomas V. Krulisky, an attending Board-certified psychiatrist, diagnosed chronic post-traumatic stress disorder related to his work at the employing establishment.[7] In a report dated February 10, 1997, Dr. James Weishaus, an attending Board-certified psychiatrist, indicated that appellant had mild post-traumatic stress disorder and major depression in remission and noted that appellant "was damaged by his experience while working at the [employing establishment]."[8]

These reports, however, are of limited probative value on the relevant issue of the present case in that Drs. Krulisky and Weishaus did not provide adequate medical rationale in support of their conclusions on causal relationship.[9] The physicians did not adequately explain the medical process through which appellant would continue to suffer an employment-related post-traumatic stress disorder for such an extended period after exposure to employment factors. Their opinions are of limited probative value for the further reason that they are not based on a complete and accurate factual and medical history.[10] Both physicians appear to have based their opinions on alleged incidents that are not accepted as employment factors, such as the claim that appellant was subjected to various vulgar sexual advances at work.

Appellant also submitted an April 11, 1996 report of Dr. James F. Larrabee, an attending Board-certified psychiatrist and an August 29, 1996 report of Dr. Shirah Vollmer, an attending Board-certified family practitioner, in which these physicians discussed the nature of his emotional condition. Although both physicians indicated that appellant had continuing emotional problems, they did not clearly indicate that these problems were due to an employment-related condition.

The Board further finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

[7] Dr. Krulisky indicated that he was not aware that post-traumatic stress syndrome could turn into another disorder such as schizophrenia.

[8] Dr. Weishaus indicated that he did not feel appellant was schizophrenic.

[9] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[10] *See William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[11] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.[12] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.[13] When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[14]

In the January 19, 1998 letter constituting his reconsideration request and a supplemental letter dated January 31, 1998, appellant presented various arguments in support of his claim. He claimed that he was humiliated by harassment at work, that he was serious about running a gymnasium, that he was not schizophrenic, that he made mistakes in reporting his educational status to physicians and that a supervisor had borrowed money from him. The Board notes that these arguments are not relevant to the main issue of the present case, which is medical in nature, *i.e.*, whether the medical evidence shows that appellant had disability after April 27, 1996 due to an employment-related emotional condition. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[15] Appellant also submitted statements in which relatives, friends and coworkers commented on his medical condition and character; he also submitted documents regarding his prior work activities, including his involvement in running a gymnasium. These documents, however, are not relevant to the main issue of the present in that they do not relate to the medical issue described above.

Appellant also argued that Dr. Sullivan had confused him with another Henry Turner. He indicated that he believed this to be true because Dr. Weishaus, an attending Board-certified psychiatrist, left him a telephone message which indicated Dr. Sullivan had reported facts about his weight and medical history which appeared to refer to another person.[16] The presentation of argument and evidence regarding this matter is not sufficient to require reopening of appellant's

[11] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[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." 5 U.S.C. § 8128(a).

[12] 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

[13] 20 C.F.R. § 10.138(b)(2).

[14] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

[15] *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

[16] Appellant submitted a cassette tape which he claimed contained Dr. Weishaus' message and statements from friends and family members indicating that they heard the message.

claim because the Office has already considered and rejected this argument.[17] The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[18] Appellant also submitted copies of medical reports and Office decisions, but these documents had already been considered by the Office.

In the present case, appellant has not established that the Office abused its discretion in its March 30, 1998 decision by denying his request for a review on the merits of its April 4, 1997 decision under section 8128(a) of the Act, because he has not shown that the Office erroneously applied or interpreted a point of law, advanced a point of law or a fact not previously considered by the Office or submitted relevant and pertinent evidence not previously considered by the Office.

The decisions of the Office of Workers' Compensation Programs dated March 30, 1998 and April 4, 1997 are hereby affirmed.

Dated, Washington, DC
November 28, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

[17] Moreover, it should be noted that the record does not show that Dr. Sullivan confused appellant with another patient. The factual and medical history in Dr. Sullivan's February 28, 1996 report is consistent with the other evidence of record.

[18] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).