

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLIFFORD T. STEVENSON and DEPARTMENT OF THE ARMY,
NATIONAL GUARD BUREAU, STATE CAMPUS, Albany, NY

*Docket No. 00-1383; Oral Argument Held June 14, 2001;
Issued July 26, 2001*

Appearances: *Clifford T. Stevenson, pro se; Paul J. Klingenberg, Esq.,*
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

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 October 21, 1999.

This case has previously been before the Board on appeal. In its August 13, 1997 decision,¹ the Board found that the case required further development of the medical evidence to determine whether appellant had sustained a permanent aggravation of his congenital condition of Wolff-Parkinson-White (WPW) disease due to factors of his federal employment. The facts and circumstances of the case as set out in the prior decision are adopted herein by reference.

Following the Board's decision, on October 15, 1997 the Office requested a supplemental report from appellant's attending physician, Dr. John G. Telles, a Board-certified cardiologist, who declined to submit an additional report.

The Office referred appellant for a second opinion evaluation with Dr. Ranjit S. Rajpal, a Board-certified cardiologist. In a report dated December 10, 1997, Dr. Rajpal noted appellant's history of injury and confirmed his diagnosis of WPW disease. He stated that one of the precipitating factors was stress which appellant experienced on the job and which resulted in repeated hospitalization with atrial flutter and fibrillation. Dr. Rajpal stated:

"This patient thus, is certainly disabled due to stressful situation[s] at his job which precipitated the episodes requiring hospitalization and has further aggravated his condition. In my opinion, stress seems to be the important factor

¹ Docket No. 95-1012.

in precipitating those episodes since this patient has not required any hospitalization following discharge from his dual civilian and military position in June of 1987.”

He concluded:

“In my opinion, the aggravation of this patient’s symptoms when he required repeated hospitalization appears to be temporary since he had not required hospitalization following discharge from his previous employment. However, this could also be the result of current anti-arrhythmic therapy which may be more effective and thus, he had not had aggravation of his symptoms lately.”

Dr. Rajpal completed a work restriction evaluation and stated that appellant could not work in stressful situations as stress in the presence of WPW syndrome triggering of atrial fibrillation can be life threatening.

The Office requested a supplemental report on December 31, 1997. On January 12, 1998 Dr. Rajpal stated that the aggravation of appellant’s condition due to employment-related stress was temporary and ceased since appellant’s discharge.

By decision dated February 4, 1998, the Office denied appellant’s claim for compensation and medical benefits after June 5, 1987 as the temporary aggravation of his WPW syndrome ceased by that date.

Appellant requested reconsideration on April 19, 1998 and submitted his arguments in support of his claim. By decision dated May 7, 1998, the Office declined to reopen appellant’s claim for review finding that the arguments he submitted were repetitive.

Appellant requested reconsideration on January 6, 1999 and again argued that the Office should accept his claim on the grounds that he had not returned to his previous physical status and that he lives with a life threatening condition. By decision dated October 21, 1999, the Office declined to reopen appellant’s claim for review of the merits.²

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant’s claim for consideration of the merits.

The Office’s regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law, advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.³

² As appellant requested review from the Board on February 22, 2000, the Board’s jurisdiction is limited to the October 21, 1999 nonmerit decision. 20 C.F.R. § 501.3(d)(2).

³ 5 U.S.C. §§ 10.609(a) and 10.606(b).

In this case, appellant attempted to submit a relevant legal argument not previously considered by the Office. However, as the Office noted, appellant had previously argued that his WPW syndrome was a permanent condition, that he had not returned to his preinjury condition and that this condition was life threatening. As appellant failed to submit new legal arguments in support of his claim, the Office properly declined to reopen appellant's claim for consideration of the merits.

The October 21, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 26, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member