

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD A. MARSHALL and DEPARTMENT OF THE ARMY,  
NATIONAL GUARD, Bismarck, ND

*Docket No. 00-2417; Submitted on the Record;  
Issued June 7, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of March 17, 2000; and (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 October 4, 1995 appellant, a 55-year-old motor vehicle operator, injured his back and neck while loading a semi-trailer. Appellant filed a claim for benefits on October 5, 1995, which the Office accepted for subluxation of the cervical and thoracic spine on October 6, 1996.<sup>1</sup>

In order to determine whether appellant currently suffered from residuals of his accepted employment injury, the Office referred appellant for a second opinion examination with Dr. William D. Canham, a specialist in orthopedic surgery. In reports dated September 27 and November 9, 1999, Dr. Canham indicated that appellant's October 4, 1995 work injury temporarily aggravated a preexisting spondylosis or degenerative disc condition. He stated, however, that this condition should have resolved by itself within a one-year period.

On November 22, 1999 the Office issued a proposed notice of termination based on Dr. Canham's opinion that appellant had no residuals or continuing disability causally related to the January 17, 1996 employment injury. The Office informed appellant that he had 30 days, in which to submit additional legal argument or medical evidence in opposition to the proposed termination. Appellant submitted a letter, received by the Office on February 15, 2000, in which he contested the proposed termination, but he did not submit any additional legal argument or medical evidence.

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<sup>1</sup> It appears from the record that appellant did not receive disability compensation due to his work injury. A November 22, 1996 report from his employing establishment's medical clinic states that "he has been working full time since the injury" and an Office memorandum dated January 20, 1999, noted that appellant was still being treated twice a month by a chiropractor and inquires as to whether appellant's "current medical [examination] be obtained to determine if [appellant's treatment] is due to his injury?"

By decision dated March 17, 2000, the Office found that appellant no longer had any condition or disability causally related to his employment. The Office found that the weight of the medical evidence, as represented by Dr. Canham's referral opinion, established that his employment-related disability had resolved.

By letter dated April 17, 2000, appellant requested reconsideration. Appellant did not submit any new factual or medical evidence with his request.

By decision dated April 24, 2000, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

The Board finds the Office met its burden of proof to terminate appellant's compensation benefits as of March 17, 2000.

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.<sup>2</sup> 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.<sup>3</sup>

In the present case, the Office based its decision to terminate appellant's compensation on Dr. Canham's referral opinion. In his reports, Dr. Canham indicated that appellant's October 4, 1995 employment injury constituted a temporary aggravation of a preexisting degenerative disc disease, which had resolved itself one year after the work incident. Appellant did not submit any countervailing medical evidence to support his continuing entitlement to disability compensation. Thus, Dr. Canham's opinion constituted the only medical evidence of record.

The Board finds that the Office properly found that Dr. Canham's referral opinion negating a causal relationship between appellant's claimed current condition and his October 4, 1995 employment injury and that he no longer had any residuals from the employment injury was sufficiently probative, rationalized and based upon a proper factual background. Accordingly, the Board finds that Dr. Canham's opinion constituted sufficient medical rationale to support the Office's March 17, 2000 decision, terminating appellant's compensation. The Board, therefore, affirms the March 17, 2000 Office 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. § 10.607, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.<sup>4</sup> Evidence that repeats

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<sup>2</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>3</sup> *Id.*

<sup>4</sup> 20 C.F.R. § 10.607(b)(1). *See generally* 5 U.S.C. § 8128(a).

or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>5</sup>

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office and he has not submitted relevant and pertinent evidence not previously considered by the Office. Thus, his request did not contain any new and relevant evidence for the Office to review. Additionally, appellant's April 17, 2000 letter failed to 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 generally contended that he was entitled to compensation based on loss of wages for specified periods, 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 April 24 and March 17, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
June 7, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>5</sup> *Howard A. Williams*, 45 ECAB 853 (1994).