

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HENRY CALHOUN, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Pensacola, FL

*Docket No. 01-241; Submitted on the Record;
Issued June 1, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant met his burden of proof to establish that he had disability after June 30, 1991 due to his June 8, 1987 employment injury; and (2) whether the refusal of the Office of Workers' Compensation Programs, in its March 9, August 3 and September 25, 2000 decisions, 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.

This is the fourth appeal in the present case. In the first appeal, the Board issued a decision¹ on September 30, 1992 in which it affirmed the July 1, August 6 and October 3, 1991 decisions of the Office² on the grounds that the Office properly terminated appellant's compensation effective June 30, 1991 because the medical evidence showed that appellant no longer had disability due to his June 8, 1987 employment injury.³ In terminating appellant's compensation, the Office had relied on the opinions of Dr. James N. Campbell, an attending Board-certified neurosurgeon and Dr. William H. Avant, a Board-certified surgeon to whom the Office referred appellant. In the second appeal, the Board issued a decision⁴ on September 1, 1994 in which it affirmed the March 10, 1993 decision of the Office⁵ on the grounds that

¹ Docket No. 92-249.

² The Board also affirmed a May 1, 1991 decision in which the Office denied appellant's claim for continuation of pay and a second October 3, 1991 decision in which the Office denied appellant's claim for travel expenses.

³ On June 8, 1987 appellant, then a 31-year-old manual clerk, sustained an aggravation of right inguinal hernia surgery and peripheral ilioinguinal and iliohypogastric nerve entrapment after "pulling down" trays of mail from a mail belt. The Office had previously accepted that appellant sustained an employment-related right inguinal hernia in November 1986 and authorized the performance of a right inguinal hernia repair on February 27, 1987. Appellant returned to limited-duty work for the employing establishment after his surgery.

⁴ Docket No. 93-2409.

⁵ The Board also affirmed a May 14, 1993 decision in which the Office denied appellant's request for merit review.

appellant did not meet his burden of proof to establish that he had disability after June 30, 1991 due to his June 8, 1987 employment injury. In the third appeal, the Board issued a decision⁶ on January 26, 1999 in which it affirmed the January 22, 1997 decision of the Office on the grounds that appellant did not meet his burden of proof to establish that he had employment-related disability after June 30, 1991.⁷ The facts and circumstances of the case up to that point are set forth in the Board's prior decisions and are incorporated herein by reference.

After the Board's January 26, 1999 decision, appellant submitted additional evidence in support of his claim that he had disability after June 31, 1991, due to his June 8, 1987 employment injury. By decisions dated June 2 and November 16, 1999, the Office denied appellant's claim on the grounds that he did not meet his burden of proof to establish that he had employment-related disability after June 30, 1991. By decisions dated March 9, August 3 and September 25, 2000, the Office denied appellant's requests for merit review.

The Board finds that appellant did not meet his burden of proof to establish that he had disability due to his June 8, 1987 employment injury after June 30, 1991, the date the Office terminated his compensation benefits.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁸ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁹ 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 prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation.¹⁰

As delineated in the prior Board decisions, the Board notes that the Office met its burden of proof to terminate appellant's compensation effective June 30, 1991 by determining that the weight of the medical evidence rested with the opinions of Drs. Campbell and Avant to whom the Office referred appellant. After the Board's January 26, 1999 decision, appellant submitted additional evidence, which he felt, showed that he was entitled to compensation after June 30, 1991 due to residuals of his June 8, 1987 employment injury. Given that the Board has found that the Office properly relied on the opinions of Drs. Campbell and Avant in terminating appellant's compensation effective June 30, 1991 the burden shifts to appellant to establish that he is entitled to compensation after that date.

⁶ Docket No. 97-2508.

⁷ The Board also affirmed July 26, 1996 and March 26, 1997 decisions in which the Office denied appellant's requests for merit review.

⁸ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁹ *Id.*

¹⁰ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

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 June 8, 1987 employment injury after June 30, 1991. Appellant submitted a February 11, 1999 report in which Dr. Campbell stated:

“He has been diagnosed with ilioinguinal genitofemoral nerve entrapment and meralgia paresthetica which is a very disabling condition. This condition is related to the herniorrhaphy that he has had in the past. He still experiences severe pain due to the herniorrhaphy. This is an injury that is not related to the motor vehicle accident that he had in 1991.”

The submission of this report is not sufficient to establish appellant’s burden of proof to establish that he had disability after June 30, 1991 due to his June 8, 1987 employment injury. In this report, Dr. Campbell apparently related appellant’s continuing problems to the February 27, 1987 right inguinal hernia repair, which was authorized by the Office. This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Campbell did not provide adequate medical rationale in support of his conclusion on causal relationship.¹¹ He did not explain the medical process through which the February 1987 surgery could have caused disability after June 30, 1991. Dr. Campbell did not mention appellant’s June 8, 1987 employment injury in his report. He did not provide any notable findings on examination or diagnostic testing and his opinion on causal relationship is not based on a complete and accurate factual and medical history.¹²

In a report dated June 24, 1999, Dr. Campbell indicated that appellant experienced pain along his inguinal ligament and numbness on the anterior medial part of his thigh. He stated, “This problem occurred while doing heavy lifting following a herniorrhaphy operation.” Dr. Campbell indicated that surgery should be considered and recommended medication for pain control. He did not provide a diagnosis of appellant’s condition but noted, “[a]t this time, [appellant] is totally disabled from this condition which is related to the heavy lifting at work following the herniorrhaphy procedure.”

Although Dr. Campbell related appellant’s continuing disability to his June 8, 1987 employment injury, he did not provide adequate rationale in support of his opinion on causal relationship. In this report, Dr. Campbell also did not provide any notable findings on examination or diagnostic testing; nor did he provide a complete and accurate factual and medical history. He did not provide any description of the June 8, 1987 employment injury that occurred when appellant was “pulling down” mail trays at work on that date. Dr. Campbell did not explain how the conditions that resulted from the June 8, 1987 injury, an aggravation of right inguinal hernia surgery and peripheral ilioinguinal and iliohypogastric nerve entrapment, could

¹¹ 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).

¹² 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).

cause disability after June 30, 1991. Dr. Campbell also failed to explain why nonwork factors would not be solely responsible for appellant's current condition.

The Board further finds that the refusal of the Office, in its March 9, August 3 and September 25, 2000 decisions, 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.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹³ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.¹⁴ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file his application for review within one year of the date of that decision.¹⁵ 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.¹⁶

In support of his December 1999, May 2000 and August 2000 reconsideration requests, appellant submitted numerous documents which he claimed supported his claim that he had disability after June 30, 1991 due to his June 8, 1987 employment injury. Appellant submitted a December 8, 1999 report in which Dr. Campbell stated:

“[A]ppellant is presently disabled and unable to return to any gainful employment. He has been diagnosed with ilioinguinal genitofemoral nerve entrapment and meralgia paresthetica, which is a very disabling condition. Appellant suffers from right groin pain following a herniorraphy operation.

He also submitted an August 28, 2000 report in which Dr. Campbell provided a similar opinion.

The submission of these reports is not sufficient to reopen appellant's claim in that they are essentially similar to reports previously submitted and considered by the Office. 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.¹⁷ Moreover, these reports do not contain a clear opinion regarding the cause of appellant's continuing disability and, therefore, they are not relevant to the main issue of the present case, *i.e.*, whether appellant submitted sufficient medical evidence to establish that he had disability after June 31, 1991 due to his June 8, 1987 employment injury. The Board has held that the submission of evidence, which

¹³ 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 her own motion or on application.” 5 U.S.C. § 8128(a).

¹⁴ 20 C.F.R. §§ 10.606(b)(2).

¹⁵ 20 C.F.R. § 10.607(a).

¹⁶ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

¹⁷ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

does not address the particular issue involved does not constitute a basis for reopening a case.¹⁸ Appellant also submitted numerous medical reports in support of his reconsideration requests, but these reports had already been considered by the Office or did not contain any opinion regarding the cause of appellant's continuing disability.

In the present case, appellant has not established that the Office abused its discretion in its March 9, August 3 and September 25, 2000 decisions by denying his requests for merit review of the Office's November 16, 1999 decision under section 8128(a) of the Act, because he did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office.

The September 25, August 3 and March 9, 2000 and November 16, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
June 1, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

¹⁸ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).