

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID A. GORTON and DEPARTMENT OF THE NAVY,
MILITARY SEALIFT COMMAND PACIFIC, Oakland, CA

*Docket No. 00-950; Submitted on the Record;
Issued March 28, 2001*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration of its July 29, 1998 decision, which denied that appellant's emotional condition was causally related to factors of his employment.

In the present case, appellant, then a 51-year-old civil service mariner, filed a claim on July 16, 1996 alleging that his major depression and a stress disorder was causally related to factors of his federal employment. By decision dated December 30, 1996, the Office denied appellant's claim for benefits as the evidence of record failed to establish that an injury was sustained as alleged. Appellant requested a hearing and submitted additional factual and medical evidence. By decision dated July 29, 1998, an Office hearing representative found that although appellant established a compensable factor of employment, that being the danger and tension involved in refueling ships at sea, the medical evidence of record failed to causally relate his condition to the compensable factor of employment. Accordingly, the denial of benefits was affirmed. By decision dated September 27, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was of an immaterial nature and was not sufficient to reopen the case for merit review.

The Board only has jurisdiction over the September 27, 1999 decision, which denied appellant's request for review of the merits of the July 29, 1998 decision. Because more than one year has elapsed between the issuance of the Office's decision finalized July 29, 1998 and December 23, 1999, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the decision finalized July 29, 1998.¹

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration of its July 29, 1998 decision, which determined that appellant's emotional condition was not causally related to factors of his employment.

¹ See 20 C.F.R. §§ 501.2(c), 501.3(d).

Under section 8128(a) of the Federal Employees' Compensation Act,² the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,³ which provides that a claimant may obtain review of the merits if his written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [Office].”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁴ If a claimant fails to submit relevant evidence not previously of record or advance legal contentions or facts not previously considered, the Office has the discretion to refuse to reopen a case for further consideration of the merits pursuant to section 8128.⁵

In the present case, appellant's claim for compensation was denied on the basis that the medical evidence failed to discuss the one compensable work factor to relate appellant's emotional condition to his federal employment. Although in his reconsideration request of July 28, 1999, appellant attempts to offer relevant medical evidence which the Office did not previously consider, such evidence, although new, is insufficient to require reopening of appellant's case for further review of the merits of his claim pursuant to section 8128 as it is either irrelevant, immaterial or duplicative of evidence already within the case record.

Appellant submitted various medical reports from the Veterans Administration (VA), which documented his mental condition. A May 7, 1991 report diagnosed appellant with post-traumatic stress disorder, chronic and declares appellant competent for VA purposes and discharge summaries of inpatient care from December 18, 1995 to March 25, 1996 and June 23 to December 16, 1986 were submitted. The Board notes that the issue in this case is medical in nature; *i.e.*, the Office's previous decision found that the medical evidence was insufficient to support a causal relation to the one compensable factor of employment, that being the danger and tension involved in refueling ships at sea, to appellant's emotional condition. The medical evidence submitted does not pertain to the relevant issue of the case, *i.e.*, whether appellant has submitted sufficient rationalized medical evidence to establish that he sustained an employment-

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b) (1999).

⁴ 20 C.F.R. § 10.608(b) (1999).

⁵ *John E. Watson*, 44 ECAB 612, 614 (1993).

related injury. The Board has held that the submission of evidence which does not address the particular issue involved is of little probative value.⁶

Along with his statement appellant also submitted a June 27, 1996 vocational assessment from the VA, a listing of medication literature involving post-traumatic stress disorder, an April 4, 1999 letter addressed to congressman Peter DeFasio and an excerpt of a church newsletter. As previously stated, the issue in this case is medical in nature. Thus, the above information is not relevant in establishing this claim and, therefore, does not constitute a basis for reopening this case.⁷

As the only limitation on the Office's authority is reasonableness, an abuse of discretion can generally only be shown through proof of manifest error.⁸

Consequently, the decision of the Office of Workers' Compensation Programs dated September 27, 1999 is hereby affirmed.

Dated, Washington, DC
March 28, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁶ *Id.*

⁷ The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee. *William C. Bush*, 40 ECAB 1064, 1075 (1989).

⁸ *Daniel J. Perea*, 42 ECAB 214 (1990).