U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TONY P. BUTLER and DEPARTMENT OF THE ARMY,
SAFETY OFFICE, Fort McPherson, GA

*Docket No. 00-1862; Submitted on the Record;*
*Issued May 17, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's November 10, 1999 request for reconsideration.

In a decision dated November 12, 1998, the Office found that the initial evidence of file supported that appellant actually experienced the claimed employment factor. The Office denied his claim for compensation, however, because the evidence did not establish that a condition was diagnosed in connection with this. The Office advised appellant as follows:

> "A rationalized medical opinion must include a discussion of the nature of the underlying conditions; their natural or traditional course; how the underlying conditions may have been affected by appellant's employment as determined by medical records covering the period of employment (in this case 2 months); whether such affects, [sic] if any, caused material changes in the underlying conditions; or, if not [sic] material changes occurred, would the symptoms or changes indicative of temporary aggravation have subsided or resolved immediately upon appellant's removal from the employment environment (in this case September 2, 1997) and, if not, at what point would such symptoms or changes has [sic] resolved; and whether any aggravated [sic] of appellant's underlying conditions caused by factors of his employment caused disability during or subsequent to appellant's employment."

The Office stated that it advised appellant of this in a letter dated September 3, 1998 and afforded him the opportunity to provide supportive evidence. The Office found that the evidence of record was insufficient because there was no narrative medical opinion, with reasons for such opinion, discussing the relationship between appellant's job factors of two months and the claimed condition or disability. Although appellant's attending physician submitted form reports indicating that appellant's schizophrenia, paranoid type and foot pain were caused or aggravated by employment activity, the physician did not discuss in medical terms how the exposure of months of working as a security guard caused or aggravated these conditions. A mere

checkmark "yes" to a question on causal relationship was of little probative value and insufficient to establish causal relationship. The Office noted that, although appellant had submitted voluminous medical documentation, there was no rationalized medical opinion evidence that his underlying disease process, as opposed to his symptoms, was adversely affected or material changed by factors of his two-month federal employment.

On November 10, 1999 appellant requested reconsideration. He submitted a copy of the Office's November 12, 1998 decision; a page of inpatient summary notes; a psychiatric evaluation dated November 2, 1999; another page of inpatient summary notes and two pages of a prescription profile.

Appellant argued that he was requesting reconsideration because the information was in the file to substantiate the fact that he incurred conditions during his federal employment. He quoted section of federal regulations and asserted that the Office was in violation of such laws "and any other laws that are pertinent to this case." Appellant stated that he wished to be rated permanently and totally disabled "by reason of Social Security."

In a decision dated February 7, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support thereof was immaterial and insufficient to warrant review of its prior decision.

The Board finds that the Office acted within its discretion in denying appellant's November 10, 1999 request for reconsideration.

Section 10.606(b) of the Code of Federal Regulations[1] provides that an application for reconsideration, including all supporting documents, must: (1) be submitted in writing and (2) set forth arguments and contain evidence that either (i) shows that the Office erroneously applied or interpreted a specific point of law, (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, where the request is timely but fails to meet at least one of the standards described in section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[2]

To support his November 10, 1999 request for reconsideration, appellant submitted evidence that is irrelevant to the grounds upon which the Office denied his claim. The Office denied his claim because he failed to submit a rationalized medical opinion explaining how his two-month federal employment adversely affected or materially changed the underlying disease process. Appellant submitted no such evidence on reconsideration. The copy of the Office's November 12, 1998 decision, the pages of inpatient summary notes, the November 2, 1999 psychiatric evaluation, the prescription profile: none of this evidence addresses the issue of causal relationship raised by the Office's November 12, 1998 decision. Appellant is not entitled to a merit review of his claim under section 10.606(b)(iii) above.

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[1] 20 C.F.R. § 10.606(b).

[2] *Id*. at § 608(b).

Appellant also offered arguments to support his request. He stated that he was requesting reconsideration because the information was in the file to substantiate the fact that he incurred conditions during his federal employment. This is but a vague disagreement with the Office's assessment of the evidence. Appellant asserted that the Office was in violation of certain federal regulations and unspecified other laws, but he did not explain or show how this was so. He stated that he wished to be rated permanently and totally disabled "by reason of Social Security." This is not a relevant legal argument because disability for Social Security purposes does not establish disability for purposes of workers' compensation.[3] Because none of appellant's arguments shows that the Office erroneously applied or interpreted a specific point of law and because appellant has not advanced a relevant legal argument not previously considered by the Office, he is not entitled to a merit review of his claim under section 10.606(b)(i) and (ii) above.

Appellant's November 10, 1999 request for reconsideration fails to meet at least one of the standards described in section 10.606(b)(2). The Office, therefore, properly denied the request without reopening the case for a review on the merits.

The February 7, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 17, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

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[3] *Hazelee K. Anderson*, 37 ECAB 277 (1986).