U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARL C. GAGLIA and DEPARTMENT OF JUSTICE, IMMIGRATION & NATURALIZATION SERVICE, New York, NY

Docket No. 00-1916; Submitted on the Record;
Issued May 15, 2001

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of his claim.

On February 14, 1997 appellant, then a 46-year-old supervisor detention enforcement officer, filed a claim for a heart condition related to stress in his employment. Appellant submitted a report dated March 14, 1997 from Dr. Joseph S. Vitiello, indicating that his unstable angina, single vessel coronary artery disease and hypertension were related to his employment, noting that appellant worked 12 to 14 hours per day in a high stress position as a chief detention officer. The Office requested and received from appellant a description of the employment incidents and conditions to which he attributed his condition.

By decision dated September 2, 1997, the Office found that appellant had not established that he sustained an injury in the performance of duty, as he had not supported that he experienced any compensable employment factors and he had not submitted rationalized medical evidence of causal relation.

Appellant requested a hearing, which was held on April 20, 1998. At this hearing appellant submitted a report from Dr. Vitiello dated January 30, 1998, who stated, "[t]he high stress level at this [appellant's] job may exacerbate a recrudescence of his underlying coronary artery disease." By decision dated September 28, 1998, an Office hearing representative found that appellant had established several instances of harassment in his employment and had also established numerous stressful incidents involving the performance of his assigned duties, including responses to emergencies and working 12 to 14 hours per day. The Office hearing representative found that Dr. Vitiello's January 30, 1998 report was equivocal and that appellant had not met his burden of proof for the reason that he had not submitted reasoned medical evidence of causal relation showing reasonable medical certainty.

By letter dated October 26, 1998, appellant requested reconsideration and submitted a report from Dr. Vitiello dated October 12, 1998. In this report Dr. Vitiello concluded, "[i]t is my

opinion that the high stress level at [appellant's] job is causally related to his cardiac condition." By decision dated January 27, 1999, the Office found that the additional evidence was not sufficient to warrant modification of its prior decision, as Dr. Vitiello's October 12, 1998 report did not contain medical rationale.

By letter dated January 3, 2000, appellant requested reconsideration. [He] submitted copies of documents regarding his October 21, 1997 Equal Employment Opportunity (EEO) complaint against the employing establishment, including his complaint, the report of counseling and a notice of a hearing set for December 15, 1999. Appellant also submitted evidence of the employing establishment's policy on smoking, showing that his facility first became a smoke-free area on March 1, 1999. Also submitted were his statement and medical reports regarding a knee injury sustained at work on November 15, 1998 and an Office claim form dated December 18, 1998, on which the employing establishment indicated no light duty was available. Appellant also submitted a report dated November 1, 1999 from Dr. Vitiello, who stated: "[H]is letter is written in response to a request for medical rationale supporting the relationship between stress and [appellant's] cardiac condition. To follow find five separate excerpts testifying to the l[e]tter." Accompanying this report were abstracts of articles from the medical literature and copies of sections from Atlas of Heart Diseases regarding the relationship between stress and hypertension.

By decision dated March 6, 2000, the Office found that appellant's request for reconsideration was not sufficient to warrant review of its prior decisions, as none of the new evidence appellant submitted was relevant.

The only Office decision before the Board on this appeal is the Office's March 6, 2000 decision, finding that appellant's application for review was not sufficient to warrant review of its prior decision. Since more than one year elapsed between the date of the Office's most recent merit decision on January 27, 1999 and the filing of appellant's appeal on May 12, 2000, the Board lacks jurisdiction to review the merits of appellant's claim.[1]

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
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> (1) end, decrease, or increase the compensation awarded; or
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> (2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2), 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

[1] 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed.

relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[2] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[3]

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim.

Appellant did not make any legal arguments in his January 3, 2000 request for reconsideration. Although he submitted new evidence with this request, the Board finds that none of the new evidence was relevant and pertinent. Appellant's claim was denied by the Office, in its January 27, 1999 decision, on the grounds that the medical evidence supporting causal relation did not contain rationale. The material from appellant's EEO complaint and regarding appellant's November 14, 1998 knee injury does not address the issue on which the claim was denied. The evidence showing that the employing establishment became a smoke-free facility on March 1, 1999 is not relevant and pertinent to the Office's decision, but instead raises a new possible cause for appellant's heart condition.

The November 1, 1999 report from Dr. Vitiello does not contain rationale and is repetitious of this doctor's prior reports. Dr. Vitiello submitted abstracts of articles from the medical literature with his report and indicated these articles provided the rationale for his opinion on causal relationship. The Board, however, has found that excerpts of medical publications are of no evidentiary value in establishing a claim as they are of general application and are not determinative as to whether specific conditions were the result of particular circumstances of the employment. This material has probative value only to the extent that it is interpreted and cited by a physician rendering an opinion on causal relationship between a diagnosed condition and specified employment factors.[4] As Dr. Vitiello did not interpret the articles, they are of no probative value and are not sufficient to require the Office to reopen appellant's case for a review of the merits of his claim.

[2] *Eugene F. Butler*, 36 ECAB 393 (1984).

[3] *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

[4] *Harlan L. Soeten*, 38 ECAB 566 (1987).

The decision of the Office of Workers' Compensation Programs dated March 6, 2000 is affirmed.

Dated, Washington, DC
May 15, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Membe