

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHERI J. CHRISTENSEN and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, San Francisco, CA

*Docket No. 01-532; Submitted on the Record;
Issued October 3, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

In the present case, appellant, then a 42-year-old claims representative, filed a claim on February 1, 1996 alleging that she had severe pain in her neck, arm and shoulder, which were caused by her computer work as a claims representative. A second claim was filed on March 28, 1996, in which appellant alleged that her work-related stress further aggravated her neck, arm and shoulder condition. She additionally noted back pain and a degenerative disc. The Office developed these two claims together. By decision dated June 17, 1996, the Office denied appellant's claim for benefits as the evidence of record failed to establish that the conditions were causally related to factors of employment. Appellant requested a hearing and submitted additional evidence. By decision dated August 14, 1997, an Office hearing representative found that appellant had not met her burden of proof in establishing a causal connection between her employment and orthopedic problems and her alleged emotional condition. Accordingly, the denial of benefits was affirmed. Appellant submitted numerous reconsideration requests. By decisions dated July 20, 1998 and June 10, 1999, the Office denied modification of its previous decisions. By decision dated August 31, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was of a cumulative nature and was not sufficient to reopen the case for merit review.

The Board only has jurisdiction over the August 31, 2000 decision, which denied appellant's request for review of the merits of the June 10, 1999 decision, the last merit decision of record. Because more than one year has elapsed between the issuance of the Office's decision dated June 10, 1999 and November 30, 2000, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the decision of June 10, 1999.¹

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

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration of its June 10, 1999 decision, which determined that appellant's orthopedic and emotional conditions were not causally related to factors of her employment.

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 her 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 neither the orthopedic conditions nor appellant's emotional condition was causally related to accepted work factors of appellant's federal employment. Although in her reconsideration request of May 26, 2000 appellant attempts to offer relevant medical evidence and provide arguments, 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 her claim pursuant to section 8128 as it is either irrelevant, immaterial, cumulative or duplicative of evidence already in the case record.

In her letter of May 26, 2000, appellant briefly indicated some of the problems she has experienced from the beginning of her “inability to work.” She also stated that she has been in therapy for years because of her job duties. Causal relationship is a medical issue,⁶ which

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).

⁶ *Mary J. Briggs*, 37 ECAB 578 (1986).

requires a physician to explain how or why he or she believes that the accident, incident, or work factor caused or affected the physical condition and the objective findings that support that conclusion. Accordingly, appellant's opinion on the cause of her emotional condition are immaterial in establishing the requisite causal relation between a medical connection and factors of federal employment.⁷

Appellant also submitted a May 16, 2000 report from Dr. Charles R. Shipley, a clinical psychologist, in which Dr. Shipley stated that appellant was experiencing major depression and generalized anxiety disorder as well as post-traumatic stress disorder as a result of her experiences in the workplace. He stated that appellant was temporarily totally disabled as a result of those conditions and was unable to work due to her psychological disability. Dr. Shipley advised that appellant had chronic pain of her neck and shoulders and that over the past year, he has seen an exacerbation of her symptomatology. Dr. Shipley noted that appellant sees Dr. Joseph Yakira at Kaiser Permanente for that condition.

The Board notes that Dr. Shipley's report, although new, is repetitive and cumulative of his prior reports in this case. The Office's previous decision of June 10, 1999, noted that Dr. Shipley diagnosed major depression and generalized anxiety disorder and opined that appellant was unable to work but failed to provide medical rationale on how appellant's federal employment duties caused or contributed to her emotional condition. Dr. Shipley's May 16, 2000 report similarly failed to address how appellant's depression and generalized anxiety disorder conditions resulted from accepted work factors. Dr. Shipley's May 16, 2000 report contains the same deficiencies noted in the Office's decision of June 10, 1999.

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, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.⁸ Appellant has made no such showing here.

⁷ *Louise F. Garnett*, 47 ECAB 639, 643 (1996).

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

Consequently, the August 31, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 3, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member