

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DARIUS L. DOBSON, SR. and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, West Los Angeles, CA

*Docket No. 01-590; Submitted on the Record;  
Issued September 13, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's July 5, 2000 request for reconsideration.

In its prior decision in this case,<sup>1</sup> the Board found that appellant's claim for a traumatic injury sustained on May 20, 1975 was barred by the applicable time limitation provisions of the Federal Employees' Compensation Act.<sup>2</sup> Appellant did not file his traumatic injury claim until February 12, 1998, more than 23 years after the date of the alleged injury. His assertion that he was not aware that he could file a claim was an insufficient cause or reason for not filing a timely claim. Further, appellant submitted no evidence that his immediate superior had actual knowledge of any work-related injury within 30 days of the alleged incident of May 20, 1975. On July 5, 2000 appellant requested reconsideration. He stated:

"I could not respond to any questions due to my many illnesses. I have not been able to take care of many legal matters in my life. In 1992, I have (sic) lost a parcel of land in North Carolina because I did not respond timely to an attorney's request. I did not respond because I was in a coma at the time. I have been in and out of comas since 1956. I have been in and out of comas approximately 20 times; the longest I have been in a coma is 2 months. I am being treated for diabetes, pancreatitis, high blood pressure, gout, osteoarthritis, spinal injuries to both upper and lower back degenerative back problems. I take multiple medicines for the various conditions. Please reconsider your denial of my claim. Next year I will be 62 years old and eligible to receive Social Security benefits. My OPM [Office of Personnel Management] benefits will be reduced by the amount of Social Security I receive."

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<sup>1</sup> Docket No. 99-294 (issued June 16, 2000).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

In a decision dated December 8, 2000, the Office found that the evidence submitted in support of appellant's request was immaterial and insufficient to warrant a review of the prior decision. The Office found that appellant had submitted no additional evidence showing that his employer had knowledge of the injury.

The Board finds that the Office abused its discretion in denying appellant's July 5, 2000 request for reconsideration.

Section 10.606(b) of the Code of Federal Regulations<sup>3</sup> provides that an application for reconsideration, including all supporting documents, must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office. The request may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If the Office grants reconsideration, the case is reopened and reviewed on its merits. Where the request fails to meet at least one of the standards described, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>4</sup>

Appellant is entitled to a merit review of his claim under the second standard: advanced a relevant legal argument not previously considered by the Office. Previously, appellant explained that he did not file in 1975 or 1979 because his supervisors had failed to inform him of the requirement to file within three years of the injury. He also stated that he was too concerned with his illnesses and injuries to think about anything else. Prior decisions in this case considered and rejected appellant's plea of ignorance and distraction.

With his July 5, 2000 request for reconsideration, appellant argued incapacitation. He explained that he was incapable of responding to or taking care of legal matters in his life because he was slipping in and out of comas and had a number of medical conditions that required medication.

Section 8122(a) and 8122(b) of the Act<sup>5</sup> set the time limitations for making a claim. Section 8122(d) provides:

“The time limitations in subsections (a) and (b) of this section do not --

(1) begin to run against a minor until he reaches 21 years of age or has had a legal representative appointed; or

(2) run against an incompetent individual while he is incompetent and has no duly appointed legal representative; or

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<sup>3</sup> 20 C.F.R. § 10.606(b).

<sup>4</sup> *Id.* at § 10.608.

<sup>5</sup> 5 U.S.C. § 8122(a).

(3) run against any individual whose failure to comply is excused by the Secretary on the grounds that such notice could not be give because of exceptional circumstances.”

Appellant’s July 5, 2000 request for reconsideration implicates section 8122(d)(2)-(3). Without ruling on the merits of whether appellant has submitted sufficient evidence to establish incompetence without representation or exceptional circumstances, the Board finds that appellant has at least advanced a relevant legal argument not previously considered by the Office. He is therefore entitled to a merit review of his claim by the Office. On remand, and after such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on the merits of appellant’s claim.

The December 8, 2000 decision of the Office of Workers’ Compensation Programs is reversed and the case is remanded for further action consistent with this opinion.

Dated, Washington, DC  
September 13, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member