

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JON LOOMIS and DEPARTMENT OF VETERANS AFFAIRS,
ALVIN C. YORK MEDICAL CENTER, Murfreesboro, TN

*Docket No. 01-800; Submitted on the Record;
Issued April 3, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs, in its decisions dated July 12 and October 26, 2000, abused its discretion by refusing to reopen appellant's case for further consideration of the merits of his claim under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record and finds that the Office acted within its discretion in refusing to reopen appellant's case for further consideration of the merits.

On May 26, 1999 appellant, then a 34-year-old practical nurse, filed a notice of traumatic injury claiming that he injured his back on May 25, 1999 while attempting to restrain a hostile patient and he fell to the floor.¹ In support of his claim, he submitted a May 25, 1999 treatment note from Dr. John Daniel Rudd, a Board-certified internist, who indicated: "back injury that occurred on duty" and stated that appellant could return to work on June 1, 1999. Appellant also submitted a report from Dr. Rudd dated May 25, 1999, describing appellant's incident at work and stating: "[Appellant] felt ok for about one hour after this altercation and then he began to have recurrent back pain. P[atien]t is very stiff and almost immobile." He also indicated: "mechanical back pain" and "no evidence of radicular component."

By letter dated July 15, 1999, the Office requested that appellant submit additional medical information to support his claim.

Appellant submitted a report from Dr. Rudd dated July 29, 1999, in which he stated:

"[Appellant] presents on May 25, 1999 and his exam[ination] was consistent, with what I had seen previously, with low back pain and stiffness. He had limited ROM [range of motion] in the LS spine. No focal/neurological deficit. No

¹ Appellant also injured himself on May 18, 1999 in a similar occurrence with another patient; that claim was accepted on July 15, 1999 for lumbar strain and right foot contusion. The only claim before the Board at this time is the incident occurring on May 25, 1999.

evidence of ecchymosis or nerve impingement. I felt that this was mechanical back pain and was consistent with the history that [appellant] had given me. I feel that this and the previous event were both consistent with work-related injuries.”²

By decision dated August 24, 1999, the Office denied appellant’s claim since the evidence of record was insufficient to establish fact of injury, noting that appellant’s physician had not provided a diagnosis.

By letter dated September 23, 1999, appellant requested reconsideration.

By decision dated October 29, 1999, the Office denied appellant’s request for modification of the previous decision.

By letter dated March 8, 2000, appellant requested reconsideration. In support of his request, he submitted a copy of Dr. Rudd’s July 29, 1999 report already contained in the record, Dr. Rudd’s May 25, 1999 treatment note already contained in the record, a copy of an Office decision accepting his previous claim, treatment notes regarding his previous claim and May 20 and 24, 1999 treatment notes from Dr. Rudd, dated before appellant’s May 25, 1999 incident.

In a nonmerit decision dated July 12, 2000, the Office denied appellant’s request for reconsideration since the evidence submitted was already contained in the record or was immaterial evidence regarding a different injury sustained prior to the May 25, 1999 incident.

By letter dated August 4, 2000, appellant requested reconsideration. In support of his request, appellant submitted Dr. Rudd’s July 29, 1999 report already contained in the record, a June 1, 1999 treatment note indicating “back pain,” a May 25, 1999 treatment note from Dr. Rudd already contained in the record, two May 24, 1999 treatment notes and two May 20, 1999 treatment notes regarding appellant’s previous claim and a copy of the Office decision accepting appellant’s previous injury.

By decision dated October 26, 2000, the Office denied appellant’s request for reconsideration since appellant did not submit any new and relevant medical evidence.

The Board’s jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.³ Because more than one year has elapsed between the issuance of the Office’s August 24, 1999 merit decision and January 26, 2001, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the August 24, 1999 decision and any preceding decisions. Therefore, the only decisions before the Board are the Office’s July 12 and October 26, 2000 nonmerit decisions denying appellant’s application for a review of its August 24, 1999 decision.

Section 8128(a) of the Federal Employees’ Compensation Act⁴ does not give a claimant the right upon request or impose a requirement upon the Office to review a final decision of the

² Dr. Rudd is referring to appellant’s previous similar incident occurring on May 18, 1999.

³ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

⁴ 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

Office awarding or denying compensation. Section 8128(a) of the Act, which pertains to review, vests the Office with the discretionary authority to determine whether it will review a claim following issuance of a final Office decision. The Office through regulations, has placed limitations on the exercise of that discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.⁵ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.⁶ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁷

In support of his March 8, 2000 request for reconsideration, appellant submitted copies of Dr. Rudd's treatment notes and report dated May 25 and July 29, 1999, both already contained in the record, and medical information regarding his previous injury. This evidence is duplicate. Also, the medical evidence does not provide a diagnosis in relation to appellant's May 25, 1999 injury.

In support of his August 4, 2000 request for reconsideration, appellant again submitted reports from Dr. Rudd already contained in the record, a copy of the Office's decision accepting his previous claim and medical information regarding his previous claim. This evidence is duplicate. Appellant also stated in his request that he does not understand why this claim continues to be denied. The Board notes that appellant's claim was denied as no diagnosis had been provided in connection to appellant's May 25, 1999 work injury.

The evidence submitted by appellant in support of his requests for reconsideration is duplicate of evidence already in the record and does not address appellant's work injury on May 25, 1999.

As appellant's March 8 and August 4, 2000 requests for reconsideration do not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying the requests.

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ 20 C.F.R. § 10.607.

⁷ 20 C.F.R. § 10.608.

The October 26 and July 12, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 3, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member