

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN ANNE COOPER and U.S. POSTAL SERVICE,
NAVAL AMPHIBIOUS BASE, Coronado, CA

*Docket No. 01-1927; Submitted on the Record;
Issued May 22, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's case for merit review.

The Office accepted appellant's claim filed on June 6, 1991 for aggravation of dysthymia (depression) and appellant returned to work as a window clerk.¹ On May 22, 1993 appellant filed a claim, which the Office denied. On May 9, 1996 the hearing representative remanded the case for further evidentiary development. On August 21, 1996 the Office again denied the claim based on the reports of Drs. Artemio G. Pagdan and Jeffrey Moran, both Board-certified in psychiatry and neurology, to whom the Office had referred appellant.

Appellant requested an oral hearing, which was held on June 13, 1997. The hearing representative again remanded the case so that the Office could resolve a conflict of medical opinion between Dr. Moran and Dr. Anne M. Berlin, appellant's treating psychologist, and between Dr. Pagdan and Dr. Frederic R. Martin, appellant's treating neurologist.

On remand, appellant was referred to Drs. Stephen M. Stahl and Jody Corey-Bloom, both Board-certified neurologists. Based on their reports, the Office denied appellant's claim on August 26, 1998 on the grounds that accepted work factors did not aggravate her preexisting dysthymia and multiple sclerosis in April 1993.

A third oral hearing was held on April 27, 1999. On August 6, 1999 the hearing representative reversed the August 26, 1998 Office decision. She found that, while Dr. Stahl's report established that appellant did not suffer a psychiatric disability in April 1993 when she attempted to return to work, her diagnosed multiple sclerosis was aggravated during her temporary assignment in April 1993, based on the reports of Drs. Corey-Bloom, Martin and

¹ Appellant was diagnosed with multiple sclerosis in 1984. She retired on disability in 1994.

Berlin. The case was remanded for the Office to determine the nature and extent of any disability.

Based on the September 30, 1999 report of Dr. Jonathan M. Light, Board-certified in neurology, the Office issued a notice of proposed termination of compensation on February 15, 2000. On March 17, 2000 the Office terminated wage-loss and medical benefits, effective April 26, 1993, on the grounds that appellant had recovered from the work-related temporary aggravation of her multiple sclerosis.

On March 20, 2001 appellant requested reconsideration and submitted a new study on multiple sclerosis as well as several legal arguments.² By decision dated May 2, 2001, the Office denied appellant's request for reconsideration on the grounds that evidence and arguments submitted were repetitious and cumulative in nature or immaterial to the issue in this case.

The Board finds that the Office properly denied appellant's request for reconsideration.

The only Office decision before the Board on appeal is dated May 2, 2001, denying appellant's request for reconsideration. Because more than one year has elapsed between the Office's last merit decision dated March 22, 2000 and the filing of this appeal on July 25, 2001, the Board lacks jurisdiction to review the merits of appellant's claim.³

Section 8128(a) of the Federal Employees' Compensation Act⁴ vests the Office with discretionary authority to determine whether it will review an award for or against compensation.⁵ Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).⁶ The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (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.⁷ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.⁸

² The record contains a memorandum that the March 17, 2000 decision was reissued on March 22, 2000 to include consideration of evidence stamped as received on March 17, 2000.

³ 20 C.F.R. §§ 501.2(c); 501.3(d)(2). *See John Reese*, 49 ECAB 397, 399 (1998).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 5 U.S.C. § 8128(a) (“[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application”).

⁶ 20 C.F.R. § 10.608(a) (1999).

⁷ 20 C.F.R. § 10.606(b)(1)-(2).

⁸ 20 C.F.R. § 10.608(b).

With her request for reconsideration, appellant submitted no new medical evidence showing that her multiple sclerosis was work related after April 1993. Instead, she submitted a copy of a medical research article that concluded that stress could affect those afflicted with multiple sclerosis. As the Office found, such evidence is not relevant and pertinent to appellant's individual case.⁹ Therefore, appellant failed to meet subsection (iii) of section 10.608(b).

Appellant's attorney argued that: (1) the Office should accept the conclusion of Dr. Martin that the identified work factors in April 1993 caused a permanent exacerbation of appellant's multiple sclerosis; (2) the Office applied the wrong standard in finding only a temporary aggravation; (3) the Office erred in crediting the opinion of the impartial medical examiner, Dr. Jonathan Licht; and (4) the Office failed to meet its burden of proof in terminating compensation.

The Board finds that all these arguments were considered in the March 22, 2000 decision and are, therefore, repetitious. The Office noted then that Dr. Martin merely restated that his opinion without further rationale and that appellant herself reported that she had no exacerbation of her condition until the end of May 1993. The Office referred appellant to Dr. Licht to determine whether the work-related aggravation of appellant's multiple sclerosis was permanent or temporary and explained why it relied on his well-reasoned report to find it temporary. The Office found that Dr. Martin provided no rationale for his conclusion that a permanent aggravation had occurred and was caused by work factors in April 1993.

The Office thoroughly discussed all the medical evidence of record and comprehensively explained why that evidence showed only a temporary aggravation of appellant's long-standing multiple sclerosis in its March 22, 2000 decision. Appellant has failed to show that the Office erred in interpreting the law and regulations governing permanent vs. temporary aggravation of a preexisting, nonwork-related condition, nor has she advanced any relevant legal argument not previously considered by the Office.¹⁰ Inasmuch as appellant failed to meet any of the three requirements for reopening her claim for merit review, the Office properly denied her reconsideration request.¹¹

The May 2, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC

⁹ The Board has long held that excerpts from publications are of no evidentiary value in establishing a claim for compensation because they are general in nature and thus not determinative of whether a specific claimant's condition is causally related to employment. *Ernest J. Lebreux*, 42 ECAB 736, 746 (1991), citing *Gaetan F. Valenza*, 35 ECAB 763, 767 n.4 (1984).

¹⁰ See *Thomas J. Engelhart*, 50 ECAB 322, 324 (1999) (appellant's legal contention regarding concurrent payment of schedule awards and wage-loss benefits was insufficient to require merit review because the Office previously addressed the issue in line with long-standing contrary Board precedent).

¹¹ See *Cleopatra McDougal-Saddler*, 50 ECAB 367, 369 (1999) (the Office properly denied merit review on grounds that appellant's legal contention was previously raised and decided).

May 22, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member