U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RUSSELL D. RUDE and DEPARTMENT OF VETERANS AFFAIRS, HARRY S. TRUMAN MEMORIAL VETERANS HOSPITAL, Columbus, MO

*Docket No. 03-1509; Submitted on the Record;*
*Issued August 21, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, MICHAEL E. GROOM

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

This is the second appeal in this case. The Board issued a decision[1] on December 16, 1998 in which it set aside a March 7, 1996 decision of the Office and remanded the case to the Office for further development of the factual evidence. The Board determined that appellant implicated several factors in causing his claimed irritable bowel condition and that the Office needed to further develop the factual evidence to determine whether any employment factors had been established.[2] The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

On remand, the Office further developed the factual evidence and accepted several employment factors, including an incident on July 13, 1993 with Dr. McElroy, wearing a ventilator, and being exposed to phosphoric acid, and metal and porcelain dust. By decision dated May 10, 1999, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish the causal relationship of the claimed condition. The Office determined that the weight of the medical evidence rested with the opinion of Dr. Steven Kaster, a Board-certified internist specializing in gastroenterology serving as an Office referral physician, who determined that appellant did not have any employment-related condition. By decisions dated March 2, 2000 and January 28, 2002, the Office denied modification of its

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[1] Docket No. 96-1993 (issued December 16, 1998).

[2] On July 18, 1994 appellant, then a 44-year-old dental laboratory technician, filed a claim alleging that he sustained irritable bowel syndrome due to stress from harassment by a supervisor, Dr. Hewitt McElroy. He indicated that the harassment was condoned by his former supervisor, Gary Lange. Appellant also alleged that he sustained stress due to his workload, wearing a ventilator, and being exposed to phosphoric acid, asbestos, and metal and porcelain dust.

May 10, 1999 decision. In January 2003, appellant requested reconsideration of his claim and, by decision dated March 5, 2003, the Office denied appellant's request for reconsideration.

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

The only decision before the Board on this appeal is the Office's March 5, 2003 decision denying appellant's request for a review on the merits of its January 28, 2002 decision. Because more than one year has elapsed between the issuance of the Office's January 28, 2002 decision and May 28, 2003, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the January 28, 2002 decision.[3]

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[4] 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) constitute 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 also must 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 reconsideration request, appellant submitted the March 25 and May 3, 1999 reports of Dr. Kaster, a Board-certified internist specializing in gastroenterology who served as an Office referral physician; a January 19, 2000 report of Dr. Michael Giacoman, an attending Board-certified internist specializing in gastroenterology; April 13 and June 19, 1995 reports of Dr. Catherine Van Voorn, an attending Board-certified internist specializing in gastroenterology; an operative report of September 19, 1998; and treatment notes from 2000. However, these reports were previously of record and already considered by the Office. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[8]

Appellant also submitted various administrative documents, but these would not be relevant as the issue of the present case is medical in nature. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a

[3] *See* 20 C.F.R. § 501.3(d)(2).

[4] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[5] 20 C.F.R. §§ 10.606(b)(2).

[6] 20 C.F.R. § 10.607(a).

[7] 20 C.F.R. § 10.608(b).

[8] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

basis for reopening a case.[9] Appellant also submitted reports of Dr. Dana Robertson, an attending chiropractor. These reports, however, would not constitute medical evidence and therefore also would not be relevant.[10]

In the present case, appellant has not established that the Office improperly refused to reopen his claim for a review on the merits of its January 28, 2002 decision under section 8128(a) of the Act, because he did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

The March 5, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
August 21, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[9] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[10] Under section 8101(2) of the Act, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2); *see Jack B. Wood*, 40 ECAB 95, 109 (1988). Although it appears that Dr. Robertson diagnosed a subluxation, it does not appear that he treated appellant for this condition and such condition is not the subject of the current claim.