

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEONARD JAZMIN and DEPARTMENT OF THE NAVY,
NAVAL SUPPLY CENTER, Oakland, CA

*Docket No. 01-1615; Oral Argument Held September 12, 2002;
Issued February 11, 2003*

Appearances: *Brook Beesley*, for appellant; *Jim Gordon, Esq.*, for the Director,
Office of Workers' Compensation Programs.

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

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

On July 27, 1999 appellant, then a 70-year-old firefighter, filed a notice of occupational disease claiming that his hearing loss was caused by noise exposure during his federal employment. Appellant submitted an October 2, 1989 report from Dr. Jared Haight, who stated it was "possible" that his hearing loss was caused by noise exposure. Second opinion physician, Dr. Adnan J. Hadeed, a Board-certified otolaryngologist, examined appellant on December 13, 1999 and diagnosed mild high frequency sensorineural hearing loss, right side, mixed hearing loss, left side and tinnitus, left side. He opined that appellant's hearing loss was not noise related, due to a flat audiometric curve and specifically due to the fact that appellant had a mixed hearing loss with a conductive component. Dr. Hadeed also noted that appellant had progressive hearing loss since his retirement from the federal government in 1989, indicating that the etiology was not noise related.

By decision dated February 29, 2000, the Office denied appellant's claim for compensation. Appellant requested an oral hearing on April 3, 2000. By decision dated May 24, 2000, the Office denied appellant's request for a hearing as untimely.

By letter dated February 13, 2001, appellant requested reconsideration, arguing that the Office failed to consider Dr. Haight's October 2, 1989 report in their decision.

By decision dated February 16, 2001, the Office denied appellant's request for reconsideration.

By letter dated February 23, 2001, appellant requested reconsideration and argued that there was a conflict in medical opinion between Drs. Haight and Hadeed. He also alleged that he was not advised of his right to representation by his physician at the second opinion examination.

By decision dated March 6, 2001, the Office denied appellant's request for reconsideration.¹

The Board finds that the Office acted within its discretion in denying appellant's requests for reconsideration.

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.² Because more than one year has elapsed between the issuance of the Office's February 29, 2000 decision and June 4, 2001, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the February 29, 2000 decision and any preceding decisions. Therefore, the only decisions before the Board are the Office's February 16 and March 6, 2001 nonmerit decisions denying appellant's requests for reconsideration.

Under section 10.606 of the Office's implementing regulations, a claimant seeking reconsideration must set forth argument or evidence which 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.³ If a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, the Office has the discretion to refuse to reopen a case for further consideration of the merits.⁴

Appellant first requested reconsideration on February 13, 2001 and alleged that the Office did not properly interpret the medical evidence of record. Appellant's own opinion regarding the Office's interpretation of the medical evidence is irrelevant and insufficient to warrant merit review. Appellant's claim was denied because he had not established that his diagnosed condition was causally related to his federal employment. Appellant did not submit any new medical evidence with his request.

Appellant also requested reconsideration on February 23, 2001 and alleged that there was a conflict in medical opinion between Drs. Haight and Hadeed and claimed he was not advised of his right to representation by his physician at the second opinion examination. His argument regarding the need for an independent medical examination is without merit since a conflict in medical opinion does not exist. The opinions of Drs. Haight and Hadeed are not of equal weight

¹ The Board may not consider evidence submitted after the Office's March 6, 2001 decision, as the review of a case shall be limited to the evidence in the case record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

² *Oel Noel Lovell*, 42 ECAB 537 (1991).

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Pamela I. Holmes*, 49 ECAB 581 (1998).

and rationale. Also, appellant's statement that he was not advised of his right to representation by his physician at the second opinion examination is without merit, as appellant was informed of this right by letter dated November 16, 1999. Appellant did not submit any new or relevant evidence in support of his request.

As appellant 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, nor submit relevant and pertinent new evidence not previously considered by the Office, he did not establish that the Office abused its discretion in denying his requests for reconsideration.

The March 6 and February 16, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
February 11, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member