

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NORMAN CARDOSO and DEPARTMENT OF LABOR,
OFFICE OF WORKERS' COMPENSATION PROGRAMS, Jacksonville, FL

*Docket No. 01-272; Submitted on the Record;
Issued January 3, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for reconsideration on November 19, 1999.

Appellant, a 53-year-old district medical director, filed a notice of occupational disease on August 25, 1987 alleging that he developed a situational stress reaction due to factors of his federal employment. The Office denied his claim on September 22, 1989. Appellant requested an oral hearing on October 4, 1989 and by decision dated May 14, 1990 the hearing representative affirmed the September 22, 1989 decision of the Office.

Appellant requested reconsideration on June 7, 1990 and by decision dated August 27, 1991, the Office denied modification of its prior decisions. He again requested reconsideration on August 20, 1992. In its November 20, 1992 decision, the Office accepted appellant's claim for temporary situational depression not to exceed July 1988, the date of his last treatment. The Office also limited the acceptance of appellant's claim to medical benefits only.

Appellant requested reconsideration of the November 20, 1992 decision on November 20, 1993 and requested wage-loss compensation. By decision dated December 21, 1993, the Office declined to reopen his claim for consideration of the merits.

Appellant submitted additional evidence with a request for review to the Board. The Board informed him that it could not consider additional new evidence on appeal. By decision dated March 13, 1996, the Office reviewed the evidence submitted and denied modification of its prior decision. Appellant again requested reconsideration on March 11, 1997. The Office denied this request as untimely by decision dated June 2, 1997 and found that appellant failed to submit clear evidence of error. He submitted sufficient evidence to establish that his March 11, 1997 reconsideration request was timely and by decision dated August 5, 1997, the Office reviewed appellant's claim on the merits and denied modification of its prior decisions.

Appellant requested reconsideration on March 30, July 22, 1998, July 19 and November 10, 1999. The Office declined to reopen appellant's claim for consideration of the merits by decisions dated April 27, October 23, 1998, September 5 and November 19, 1999, respectively.

The Board's jurisdiction is limited to final decisions of the Office issued within one year prior to the date of the appeal to the Board.¹ The only decision before the Board on this appeal is that of the Office dated November 19, 1999 in which appellant's request for reconsideration was denied. Since more than one year elapsed from the date of issuance of the Office's August 5, 1997 merit decision to the date of the filing of appellant's appeal, on October 28, 2000, the Board lacks jurisdiction to review that decision.²

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits on November 19, 1999.

The Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law; advances a relevant legal argument not previously considered by the Office or constitutes relevant and pertinent new evidence not previously considered by the Office.³

In his November 10, 1999 request for reconsideration, appellant alleged that the Office had not properly evaluated and prepared the facts of the case for presentation to the Board. He stated that at one time the notes of his attending physician, Dr. Marlin Moore, a Board-certified psychiatrist, were included in the case record. Appellant further alleged, "[O]nly by context ripping and by manipulating the evidence were the examiners able to falsely make it appear that ongoing causality was not supported by the initially treating physician, Dr. Moore." Appellant asserted that Dr. Moore supported his claim for continuing disability and medical benefits on and after August 1987 and that there is no evidence that his concerns regarding his cancer were the reason that he sought continuing psychotherapy. He also asserted that at the time that Dr. Moore referred him to Dr. Carl S. Burak, a Board-certified psychiatrist, his likelihood of recurrence of cancer was very slight and that the referral was not due to his fear of prostate cancer.

Review of the record establishes that appellant has continually alleged that the Office did not properly consider the facts and that the claims examiners failed to review the evidence correctly or changed the medical evidence by supposition, fabrication and subversion. In his July 19, 1997 request for reconsideration, reviewed by the Office in its September 5, 1999 decision which was issued more than one year before the date of appellant's appeal to the Board on October 28, 2000 and is therefore, beyond the Board's jurisdiction, appellant also alleged that Dr. Moore supported continuing causal relationship and that any concerns regarding his prostate cancer would have abated by the time Dr. Moore referred him to Dr. Burak. Furthermore, in this

¹ 20 C.F.R. § 501.3(d)(2).

² See 20 C.F.R. § 501.3(d).

³ 5 U.S.C. §§ 10.609(a) and 10.606(b).

request for reconsideration, appellant alleged that Dr. Moore provided his notes at the oral hearing on March 7, 1990.⁴ As appellant has previously made the allegations contained in his November 10, 1999 reconsideration request, the allegations do not constitute new legal arguments and are not sufficient to require the Office to reopen appellant's claim for consideration of the merits. As appellant has neither submitted new evidence, nor new legal argument, the Office properly declined to reopen his claim for consideration of the merits.

The November 19, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 3, 2003

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁴ The transcript of the oral hearing on March 7, 1990 does not include documentation that Dr. Moore submitted his treatment notes. Indeed during the hearing, appellant declined to include the complete notes indicating that the notes "touched on criminality."