

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERALD LEPRE and DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS, Otisville, PA

*Docket No. 03-1014; Submitted on the Record;
Issued July 3, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On November 24, 1993 appellant, then a 34-year-old correctional officer, filed a notice of traumatic injury alleging that on November 17, 1993 an inmate assaulted him by striking him on the left side of his body with the head of a push broom. The Office accepted that appellant sustained a lumbosacral strain in the performance of duty on November 17, 1993 and paid appropriate compensation benefits.

On July 18, 1999 the Office terminated appellant's compensation benefits on the grounds that the medical evidence of record indicated that the effects of the November 17, 1993 work injury had ceased. Appellant disagreed with the Office's decision and requested an oral hearing. By decision dated December 29, 1999, the Office hearing representative affirmed the prior decision. Appellant requested reconsideration and, by decision dated March 2, 2000, the Office denied modification of the previous decision. Appellant requested reconsideration on September 23, 2000 and April 30, 2001 and, by decisions dated November 28, 2000 and October 17, 2001, the Office denied modification of the previous decision. In the final merit decision dated October 17, 2001, the Office found that appellant had not established continuing disability after July 18, 1999 causally related to the accepted 1993 employment injury.

By letter dated September 10, 2002, appellant requested reconsideration and an oral hearing and submitted an affidavit outlining the history of his case, one page from a decision of the United States Court of Appeals for the District of Columbia Circuit dated December 21, 2001 and decisions of the Social Security Administration (SSA) dated April 19, 2001 and August 28, 2002. By letter dated December 11, 2002, the Office requested that appellant advise of the specific appeal right he wished to pursue; appellant clarified that he was requesting reconsideration. In a nonmerit decision dated February 24, 2003, the Office denied appellant's

request for reconsideration on the grounds that appellant neither raised substantive legal questions nor included new and relevant evidence to warrant review of the prior decision.¹

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 October 17, 2001 merit decision and March 10, 2003, the date appellant filed his appeal with the Board, lacks jurisdiction to review the October 17, 2001 decision and any preceding decisions. Therefore, the only decision before the Board is the Office's February 24, 2003 nonmerit decision denying appellant's application for a review of its October 17, 2001 decision.

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

To require the Office to reopen a case for merit review, section 10.606 provides that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and setting forth arguments or submitting evidence that 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 When a claimant fails to meet at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.⁴

The underlying issue in this case is continuing disability after July 18, 1999 causally related to the 1993 employment injury. In support of his request for reconsideration, appellant submitted a personal statement, a page from a decision of the United States Court of Appeals and decisions from the SSA. Appellant's personal statement is insufficient to reopen his case since he merely outlined the case history beginning with his November 17, 1993 job injury and did not allege that the Office erroneously applied or interpreted a specific point of law or raise a new legal argument.

The decisions from the SSA found that appellant was disabled beginning June 26, 1998 and was entitled to disability and disability insurance benefits under the Social Security Act.⁵ However, the SSA decisions have no evidentiary value in this case, as the Board has held that entitlement to benefits under one Act does not establish entitlement to the other.⁶ The findings of other administrative agencies have no bearing on proceedings under the Federal Employees'

¹ Appellant submitted additional evidence after the February 24, 2003 decision; however, the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

² 20 C.F.R. §§ 501.2(c), 501.3(d) (2).

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

⁴ 20 C.F.R. § 10.608(a).

⁵ The other decision was not in favor of appellant.

⁶ *Hazelee K. Anderson*, 37 ECAB 277 (1986).

Compensation Act,⁷ which is administered by the Office and the Board and a determination made for disability retirement purposes is not determinative of the extent of employment-related disability for compensation purposes. The two relevant statutes (Social Security Act and the Federal Employees' Compensation Act) have different standards of medical proof on the question of disability; disability under one statute does not prove disability under the other. Furthermore, under the Federal Employees' Compensation Act, for a disability determination, appellant's conditions must be shown to be causally related to his federal employment. Under the Social Security Act, conditions which are not employment related may be taken into consideration in rendering a disability determination.⁸ In a similar case, *Daniel Deparini*,⁹ the Board found that a decision of an administrative law judge finding that appellant was disabled under the Social Security Act had no evidentiary value and did not warrant the reopening of appellant's case. In this case, the Board also finds that the decisions have no evidentiary value and are insufficient to reopen appellant's case for merit review. As appellant did not meet at least one of the above-mentioned requirements for obtaining a merit review, the Board finds that the Office properly denied his request.

The February 24, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 3, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *John P. Hurley*, 34 ECAB 494 (1982).

⁹ *Daniel Deparini*, 44 ECAB 657 (1993).