

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL R. SHAFFER and UNITED STATES GOVERNMENT,

*Docket No. 02-836; Submitted on the Record;
Issued June 3, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128.

On September 7, 1999 appellant filed a Form WC-3 claim for injury or disability benefits by a civilian American citizen, pursuant to section 5(f) of the War Claims Act of 1948. He alleged that he developed a neurological condition and loss of ambulatory status as a result of his incarceration by the Japanese Government in the Philippines from May 1942 to February 4, 1945. In a decision dated December 7, 1999, the Office denied appellant's claim for compensation on the grounds that he failed to establish, based on the medical evidence, a causal relationship between his diagnosed medical problems and the fact that he had been a prisoner of war. Appellant filed an appeal with the Board contesting the Offices' determination. On May 8, 2001 the Board affirmed the Office's December 7, 1999 decision.¹ The Board's May 8, 2001 decision is incorporated by reference herein.

By letter dated September 19, 2001, appellant filed a request for reconsideration. In conjunction with his reconsideration request, he submitted a July 9, 2001 report prepared by Dr. Regis W. Haid, stating as follows: "We reviewed the myelogram and post myelogram CAT scan of the cervical and thoracic spine. This does not show any spinal cord compression. From my standpoint appellant has an underlying history consistent with B-12 deficiency and Schilling's disease from a Prisoner of War (POW) camp."

In a decision dated January 2, 2002, the Office denied appellant's request for reconsideration on the grounds that his new evidence on reconsideration was cumulative and repetitious in nature.

The Board finds that the Office did not properly deny appellant's request for reconsideration on the merits under section 8128.

¹ *Michael R. Shaffer*, Docket No. 00-1857 (issued May 8, 2001).

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.² The regulations provide that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.³ When an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁴ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁵ 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."⁶

In this case, appellant's claim was previously denied because he failed to submit a reasoned medical opinion to establish a causal relationship between his diagnosed condition and his imprisonment in the Philippines. On reconsideration, appellant provided new evidence consisting of a July 9, 2001 report from Dr. Haid, which stated that appellant has "an underlying history consistent with B-12 deficiency and Schilling's disease from a POW camp." The Office determined that Dr. Haid's July 9, 2001 report was repetitious of his prior medical opinion. The Office specifically noted that appellant still had not presented a reasoned opinion on causation supported by medical rationale. The Board, however, finds that Dr. Haid's report constitutes new and relevant evidence not previously considered by the Office as contemplated by section 8128.

The requirements for reopening a claim for merit review do not include the necessity to discharge his or her burden of proof. The requirements pertaining to the submission of evidence in support of reconsideration only specify that the evidence be relevant and pertinent and not previously considered by the Office.⁷ If the Office should determine that the new evidence submitted lacks substantive probative value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.⁸

The Board acknowledges that Dr. Haid's July 9, 2001 report may be lacking in adequate medical rationale to justify an award of compensation, but the weight to be accorded the medical

² 5 U.S.C. § 8128; see *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

³ 20 C.F.R. § 10.606(b) (1999).

⁴ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁵ *Edward Matthew Diekemper*, 31 ECAB 224 (1979)

⁶ 20 C.F.R. § 10.608(b).

⁷ See *Arlesa Gibbs*, 53 ECAB____ (Docket No. 01-133, issued November 2, 2001); *Paul Kovash*, 49 ECAB 350 (1998)

⁸ *Id.*

opinion should only be determined following a merit review of the record. Thus, the Board concludes that the Office erred in denying appellant's request for reconsideration under section 8128.

The decision of the Office of Workers' Compensation Programs dated January 2, 2002 is set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
June 3, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member