

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE E. BROWN and DEPARTMENT OF VETERANS AFFAIRS,
JERRY L. PETTIS MEMORIAL MEDICAL CENTER, Loma Linda, CA

*Docket No. 02-284; Submitted on the Record;
Issued May 16, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

This case has previously been on appeal before the Board. By decision dated January 29, 2001, the Board found that appellant had established several compensable factors of employment pertaining to her claim for an emotional condition. Turning to an analysis of the medical evidence, the Board found that it was not apparent from the record that Nelson E. Evans, Ed.D., was a "clinical psychologist" or that his reports were those of a "physician" as defined under the Federal Employees' Compensation Act. The Board determined that his reports had no probative value on the issue of appellant's emotional condition.¹

By letter received by the Office on June 5, 2001, appellant, through her representative, requested reconsideration, contending that Dr. Evans was qualified as a psychologist and that videotaping of appellant was part of an investigation of workers' compensation fraud.² This letter was accompanied by a copy of an annual renewal certificate as a qualified medical evaluator issued to Dr. Evans by the State of California's Industrial Medical Council, and a copy of the license as a psychologist issued to Dr. Evans on March 8, 1990 by the Board of Medical Quality Assurance of the State of California. Also attached was a June 19, 1998 response from the employing establishment's regional counsel to a Freedom of Information Act request regarding workers' compensation investigations, stating that he was enclosing a copy of the videotape involving the investigation of appellant and others.

¹ Docket No. 99-1720 (issued January 29, 2001). The facts and the circumstances of the case are set forth in the January 29, 2001 decision and are incorporated herein by reference.

² Appellant's representative noted that the Board's January 29, 2001 decision stated: "Although a June 10, 1998 letter from the employing establishment's regional counsel indicates that appellant was videotaped as part of an investigation, the evidence does not establish that this investigation related to workers' compensation benefits under the Federal Employees' Compensation Act."

The Office contacted the State Board by telephone and was advised that California issues the same license for all disciplines of psychology. The Office contacted the California Psychological Association, which advised that it did not have information on the particular kinds of psychology individuals specialized in. The Office called Dr. Evans, who did not answer the question of what his specialty was and stated that it was his understanding that he was a full-fledged psychologist.

By decision dated August 30, 2001, the Office found that the June 19, 1998 letter from the employing establishment's regional counsel was irrelevant and that the information submitted about Dr. Evans was "irrelevant in establishing that Dr. Evans is a licensed clinical psychologist."

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that 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 does not address the particular issue involved does not constitute a basis for reopening a case.³

Section 8101(2) of the Federal Employees' Compensation Act provides that the term "physician" includes "clinical psychologists" within the scope of their practice as defined by state law.⁴ The Office's procedure manual⁵ states that the Office has accepted the American

³ *Kevin M. Fatzer*, 51 ECAB 407 (2000).

⁴ 5 U.S.C. § 8101(2).

⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Overview*, Chapter 3.100.3a (October 1990).

Psychological Association's definition of a clinical psychologist. This definition defines a clinical psychologist as an individual who:

“(1) Is licensed or certified as a psychologist at the independent practice level of psychology by the state in which he or she practices, and

“(2) Either possesses a doctoral degree in psychology from an educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation or is listed in a national register of health service providers in psychology which the Secretary of the Department of Labor deems appropriate, and

“(3) Possesses two years of supervised experience in health service, at least one year of which is post degree.”⁶

Given the definition of “clinical psychologist” accepted by the Office, the evidence submitted by appellant showing that Dr. Evans is licensed by the State of California is not relevant to a determination of whether he is a “clinical psychologist” as defined by the Office. This evidence does not address whether Dr. Evans has a doctoral degree in psychology, whether he is listed in a national register of health service providers in psychology or whether he has the requisite experience in health service.

The other evidence submitted by appellant -- the June 19, 1998 letter from the employing establishment's regional counsel -- was also correctly found to be irrelevant. As investigations are administrative actions by the employing establishment, reactions to them would be covered under the Federal Employees' Compensation Act only if error or abuse in the investigation is shown.⁷ The newly submitted evidence on the videotaping of appellant does not raise any inference of error or abuse.

⁶ *Id.*

⁷ *Merriett J. Kauffman*, 45 ECAB 696 (1994).

The decision of the Office of Workers' Compensation Programs dated August 30, 2001 is affirmed.

Dated, Washington, DC
May 16, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member