

Appellant was thereafter referred to a Board-certified neurologist, Dr. Randall G. Trudell, who indicated that appellant was experiencing erectile dysfunction. Subsequently, a second opinion examination from Dr. Coy Freeman, a Board-certified urologist, recommended a penile implant, which was accepted by the Office as being employment related and the surgery was authorized.

On March 18, 1994 a second opinion examiner, Dr. E. Brantley Burns, a Board-certified orthopedic surgeon, opined that there were psychological components to appellant's sexual dysfunction and that no test had shown any injury to the back area to the nerves that control the penis and bladder.

On April 27, 1994 Dr. Trudell reiterated his opinion that appellant's impotence was causally related to his back injury.

The Office determined that a conflict in medical opinion had arisen between Dr. Burns and Dr. Trudell and referred appellant for an impartial medical examination with a Board-certified neurologist, Dr. William E. Foree, Jr.

On August 23, 1994 Dr. Foree opined that there was no relationship between appellant's sexual dysfunction and the employment injury.

On that basis, by decision dated March 30, 1998, the Office rescinded their acceptance of appellant's erectile dysfunction. This decision was set aside by the Branch of Hearings and Review, which found Dr. Foree's report insufficiently rationalized and not adequate and the case was remanded for referral to an appropriate specialist, Dr. S. Ravi Chander, a Board-certified neurologist. On July 16, 1999 Dr. Chander found that appellant had recovered from his July 23, 1987 low back strain and opined that there was no relationship between the low back strain and the erectile dysfunction. On that basis the Office terminated benefits effective September 27, 1999.

Appellant requested an oral hearing which was held on March 16, 2000. On April 24, 2000 the hearing representative affirmed the September 27, 1999 decision but, modified it to allow for medical expenses for maintenance of the implant and any compensation under the schedule award provision of the Federal Employees' Compensation Act for impairment due to the surgery.

Thereafter, appellant requested a schedule award and submitted a June 29, 2000 report from his treating urologist, Dr. Freeman. The Office medical adviser reviewed the evidence and found that appellant was not entitled to a schedule award under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, as it did not allow for an impairment rating based solely on any implant, nor was there a rating for a "failed" implant. He noted that the A.M.A., *Guides* provided three criteria to be used in evaluating sexual dysfunction: erection, ejaculation and sensation. On May 15, 2001 the Office denied appellant's schedule award request finding that the medical evidence of record did not support that appellant suffered an impairment of sexual function.

Appellant disagreed and requested an oral hearing which was held on February 20, 2002. At this hearing appellant presented no new medical evidence in support of his schedule award request. By decision dated April 16, 2002, the hearing representative affirmed the May 15, 2001 decision finding that the medical evidence of record did not support that appellant sustained a loss of function over his previous ability, that he had ejaculatory impairment or that he had loss of sensation.

By letter dated April 9, 2003, appellant requested reconsideration and argued that he did have erectile dysfunction and sensory changes, including pain. Accompanying appellant's reconsideration request was an April 27, 1994 report from Dr. Trudell, who stated that he believed that appellant's organic impotence was on the basis of a neurologic injury sustained during his back trauma.

By decision dated May 12, 2003, the Office denied appellant's request for a review of his case on its merits on the grounds that his statement did not raise a new legal argument and the report provided did not constitute new evidence warranting a merit review.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain a review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent 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 or argument that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.² Further, a lay person's opinion on a medical question has no probative value.³

ANALYSIS

In this case, appellant submitted a statement claiming that he did have erectile dysfunction and sensory changes, including pain. However, this does not constitute a new legal argument as to whether or not appellant had erectile dysfunction and sensory changes is a medical question that can only be answered by a physician.

Appellant also submitted an April 27, 1994 report from Dr. Trudell, in which he stated that he believed that appellant's organic impotence was on the basis of neurologic injury sustained during his back trauma. As this report was already of record and previously considered

¹ *Helen E. Paglinawan*, 51 ECAB 591 (2000).

² *Kevin M. Fatzner*, 51 ECAB 407 (2000).

³ *See Sheila Arbour (Victor E. Arbour)*, 43 ECAB 779 (1992).

it does not constitute new relevant medical evidence and, therefore, does not warrant a reopening of the case for further review on its merits.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for merit review on May 12, 2003.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 12, 2003 is hereby affirmed.

Issued: November 26, 2003
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member