

FACTUAL HISTORY

This is the second appeal in this case.¹ The Board issued a decision on February 23, 1996 which set aside a February 3, 1993 Office decision which denied modification of a finding that appellant had no residuals of his work-related psychiatric condition after November 1991.² The Board determined that a conflict in medical opinion continued to exist and remanded the case for referral to an impartial medical examiner. The facts and the circumstances of the case are set forth in the Board's prior decision and are incorporated herein by reference.

On remand the Office referred the case to Dr. David Bedrin, a Board-certified psychiatrist, for evaluation. In a June 25, 1996 report, the physician diagnosed a personality disorder and determined that the disorder was totally nonindustrially related and preexisted appellant's employment. Dr. Bedrin concluded that appellant had no work-related emotional condition.

By decision dated July 19, 1996, the Office denied appellant compensation after November 1991 on the grounds that the medical evidence did not establish that he was psychiatrically disabled as a result of his federal employment.

Appellant requested a hearing and on April 29, 1997 an Office hearing representative affirmed the July 19, 1996 decision. He requested reconsideration with additional medical evidence. By decision dated March 26, 1999, the Office found that there was no basis to modify the prior decision.

In a subsequent March 8, 2000 decision, the Office vacated the April 29, 1997 decision on the grounds that the evidence did not conclusively establish that appellant's continuing depressive condition causally related to his federal employment had ceased. The Office reopened the case for further development.

On November 2, 2001 the Office determined that there remained a conflict in medical opinion as to whether appellant's ongoing symptoms were associated with a work-related personality disorder. Appellant's physician, Jack Boghosian, Ph.D, a clinical psychologist, supported that appellant's symptoms and disability were the result of workplace stress while Dr. Bedrin opined that appellant's condition was caused by his nonwork-related personality disorder. He was referred to Dr. Navin Adatia, a Board-certified psychiatrist, selected as the impartial medical specialist to resolve the conflict. Dr. Adatia determined in a July 2, 2002 report that appellant had a long-standing personality disorder with occasional episodes

¹ On January 8, 1991 appellant, then a 57-year-old operations training specialist, filed a claim alleging that on November 5, 1990 he became aware that he had developed an emotional condition and that on November 13, 1990 he realized that it was related to factors of his federal employment. By decision dated November 20, 1991, the Office accepted a depressive disorder and paid compensation for the period November 1990 through November 1991. The Office denied compensation on and after November 1991 on the basis that the weight of medical evidence established that appellant had no further psychiatric condition causally related to factors of his federal employment in the performance of duty. Appellant requested reconsideration and by decision dated February 22, 1993, the Office denied modification. He thereafter appealed to the Board.

² Docket No. 94-1232.

throughout his federal employment, which dated back to his previous employment at Honeywell. He found that there were only brief periods in 1980 and 1991, where appellant had a psychiatric condition of depressive disorder with some connection to work. Dr. Adatia concluded that, at the time of examination, appellant did not have an active psychiatric condition; that such condition had resolved.

By decision dated August 9, 2002, the Office determined that the weight of the medical evidence rested with the opinion of Dr. Adatia that appellant's depressive condition causally related to his federal employment had ceased.

In a letter received July 14, 2003, appellant, through counsel, requested reconsideration. Counsel argued that Dr. Adatia's medical opinion was deficient to support that his work-related condition had ceased and that his disabling condition continued beyond November 29, 1991. He argued that Dr. Adatia did not spend sufficient time in a direct interview with appellant. Counsel also argued that he provided no rationale explaining how the mental condition resolved by November 30, 2001 and did not comment on appellant's medical condition during the relevant period beyond November 29, 1991.

By decision dated October 10, 2003, the Office denied appellant's request for reconsideration on the grounds that the arguments raised were irrelevant in nature and, therefore, insufficient to warrant merit review of the prior decision.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act,³ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁴ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.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

ANALYSIS

In the present case, the Office denied appellant's claim on October 10, 2003 without conducting a merit review on the grounds that he failed to submit any new and relevant evidence to warrant further merit review of the prior decision. Appellant did not submit any medical

³ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.607(a).

⁶ 20 C.F.R. § 10.608(b).

evidence with his July 14, 2003 request for reconsideration. Rather, counsel argued that the Office improperly accorded the weight of the medical evidence to Dr. Adatia, the impartial medical specialist. He was called to resolve the conflict in medical opinion regarding whether appellant's accepted depressive disorder had resolved.⁷

Counsel argued that Dr. Adatia's opinion was deficient, contending that the physician did not spend sufficient time interviewing appellant during his evaluation and the medical report failed to resolve whether there was an employment-related condition after November 1991. The issue of whether appellant has a continuing work-related disability is medical in nature.⁸ While appellant's counsel argued that Dr. Adatia's report was not well rationalized to support that he still had work-related disability, the Office had previously considered the report and found it to represent the weight of the medical evidence on the issue of continuing disability. As appellant failed to raise substantive legal questions or to submit new relevant and pertinent evidence not previously reviewed by the Office, the Office properly refused to open appellant's claim for review of the merits. The Board has held that the submission of evidence, which does not address the particular issue involved does not constitute a basis for reopening a case.⁹

Because the evidence submitted on reconsideration does not constitute relevant and pertinent new evidence, it is insufficient to warrant modification of the prior decision. Accordingly, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office properly denied his July 14, 2003 request for reconsideration.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further reconsideration of the merits of his claim.

⁷ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990). (In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.)

⁸ Whether a particular injury caused an employee to be disabled for employment and the duration that disability are medical issues which must be established by reliable and substantial medical evidence. See *Fereidoon Kharabi* 52 ECAB 291 (2001).

⁹ *Alan G. Williams*, 52 ECAB 180 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 10, 2003 is affirmed.

Issued: October 18, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member