

FACTUAL HISTORY

On August 16, 2001 appellant, then a 50-year-old engineer equipment operator, filed a traumatic injury claim alleging that on July 19, 2001 he experienced continuous ringing and hissing in his ear and impaired hearing, causally related to engineering equipment operation. He also noted excessive worrying, depression and confusion resulting from the ringing and hissing. The Office assigned File No. 132048801.

On March 6, 2002 appellant filed an occupational disease claim alleging that he sustained stress and an emotional condition that came with the tinnitus and hearing loss, due to his operation of a John Deere tractor on July 19, 2001.²

Also submitted were computer generated clinical study results, unsigned clinic form reports, a copy of a previously submitted assessment and a care plan, and audiogram test results. A March 12, 2002 report from a clinical psychologist, Dr. Ralph J. Lamson, was submitted which discussed appellant's progress in a recovery program. In a June 2, 2002 report, Dr. Ira Polonsky, a clinical psychologist, noted that appellant was unable to perform his duties including light duty at that time. A duplicate copy of a September 18, 2001 report from Dr. Lamson was submitted to the record on March 18, 2002. An October 31, 2001 report from Dr. Marc Weiss, a Board-certified otolaryngologist, was submitted which described appellant's symptoms. A February 28, 2002 report from Dr. James D. Woolery, a Board-certified psychiatrist, diagnosed sensorineural hearing loss and tinnitus. He noted that appellant was ill due to alcoholism and a chronic major depression. Dr. Woolery observed that appellant was on medication for depression, and that his tinnitus was so distressing, he should be removed from noise-producing equipment.

By decision dated September 16, 2002, the Office rejected appellant's claim finding that, although it accepted that he had a sensorineural hearing loss and subjective tinnitus, he failed to establish that he sustained an emotional condition as a consequential injury to his hearing loss. Moreover, the Office found that appellant did not establish that he had disability for work due to his tinnitus or hearing loss.

Appellant disagreed with this decision and requested an oral hearing that was held on May 15, 2003, at which he appeared. Appellant submitted a November 29, 2001 letter from Dr. Wayne Barber, a Board-certified otolaryngologist, which noted appellant's history of military noise exposure to mechanized armor, and indicated that he had also been exposed to industrial noise. Dr. Barber diagnosed a sensorineural hearing loss with tinnitus.

By decision dated June 30, 2003, the hearing representative affirmed the September 16, 2002 decision, finding that appellant failed to meet his burden of proof to produce rationalized medical evidence addressing the causal relationship of his claimed psychiatric condition with his employment-related hearing loss and tinnitus.

² Appellant filed three prior claims: No. 13-2037104 was accepted for high frequency binaural hearing loss with tinnitus, secondary to noise exposure; No. 13-1134640 was rejected in 1997 for an emotional condition; and No. 13-2019293 was also rejected for an emotional condition in April 2001.

On June 28, 2004 appellant requested reconsideration of his claim. On July 8, 2004 the Office received his representative's arguments on behalf of appellant, which requested that the June 30, 2003 decision be rescinded and his claim for stress and depression be accepted.

By decision dated December 14, 2004, the Office denied reconsideration on the grounds that the evidence submitted in support of the request was previously submitted and that the arguments advanced were repetitive.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ the Office 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) provide relevant and pertinent new evidence that was 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 must also file his 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 further review on the merits.⁶ The submission of repetitive or cumulative medical evidence previously considered does not constitute a basis for reopening a claim.⁷

ANALYSIS

In support of his request for reconsideration of the June 30, 2003 hearing representative's decision, appellant submitted copies of reports which had been previously submitted and considered by the Office. Included with this evidence was the November 29, 2001 letter from Dr. Barber which diagnosed hearing loss with tinnitus and noted his exposure history. Appellant resubmitted computer generated clinical study results, unsigned clinic form reports, a copy of a hearing assessment and care plan, and audiogram results, none of which discuss the causal relationship of his hearing loss to his emotional condition. A duplicate copy of a September 18, 2001 report from Dr. Lamson was submitted to the record on March 18, 2002. An October 31, 2001 report from Dr. Weiss, a Board-certified otolaryngologic surgeon, was submitted which merely described appellant's symptoms. A February 28, 2002 report from Dr. Woolery, a Board-certified psychiatrist, diagnosed sensorineural hearing loss and tinnitus. He also noted that appellant suffered from alcoholism and chronic major depression. This evidence was also previously of record and considered by the Office. A March 12, 2002 report from a psychologist, Dr. Lamson, was submitted which discussed appellant's progress in the recovery

³ 5 U.S.C. § 8101 *et seq.* 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 his 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).

⁷ *W.H. Van Kirk*, 28 ECAB 542 (1977).

program, and a June 2, 2002 report from another psychologist, Dr. Polonsky, noted that appellant was unable to perform his duties, including light duty, at that time. As this medical evidence was previously submitted to the record and reviewed by the Office, it is duplicative and cumulative and, therefore, does not constitute a basis for reopening the claim for further review.

Appellant has failed to show that the Office erroneously applied or interpreted a specific point of law; to advance a relevant legal argument not previously considered by the Office; or to provide relevant and pertinent new evidence that was not previously considered by the Office. The evidence does not provide a basis for reopening his claim for further merit review. Accordingly, his request for reconsideration must be denied

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2004 nonmerit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 18, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board