United States Department of Labor
Employees' Compensation Appeals Board

W.M., Appellant	)	
and	)	**Docket No. 07-538**
	)	**Issued: June 4, 2007**
DEPARTMENT OF HEALTH, EDUCATION & WELFARE, MENTAL HEALTH STUDY CENTER, Adelphi, MD, Employer	)	

Appearances:
Thomas Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 19, 2006 appellant filed a timely appeal of a November 1, 2006 decision of the Office of Workers' Compensation Programs denying his request for reconsideration and a July 19, 2006 merit decision with respect to termination of compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate compensation for wage-loss and medical benefits effective February 25, 2001; and (2) whether the Office properly denied appellant's application for reconsideration without merit review of the claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

The Office accepted that appellant sustained acute cervical, dorsal and lumbosacral strains in a motor vehicle accident on October 7, 1965. The Office also accepted a herniated

intervertebral disc resulting from a December 19, 1967 employment injury. Appellant underwent lumbar surgery on January 2, 1968. He resigned from the employing establishment in 1969 and began receiving compensation for total disability.

Appellant's attending physician, Dr. David Bosacco, an orthopedic surgeon, indicated in a September 3, 1998 report, that appellant underwent left shoulder surgery. The Office referred him for a second opinion examination by Dr. Stephen Valentino, an osteopath. In a report dated August 26, 1999, Dr. Valentino provided a history and results on examination. He stated in pertinent part:

> "Based on today's evaluation I find no objective findings of residuals from [appellant's] history of work[-]related injury. His most recent diagnostic studies show no evidence of residual from his disc herniation and no basis for ongoing radiculopathy such that no ongoing disability is imparted to his history of work[-]related injury and subsequent treatment thereof. [Appellant] no longer suffers any residuals from his history of work injury. He does have rather significant medical findings which would impose a significant degree of disability with regard to his function and employability. Specifically, significant diabetes, cataracts, Charcot joints and history of thoracic compression fractures. These, however, are not casually related to [appellant's] employment."

In a report dated November 21, 2000, Dr. Valentino indicated that he had reviewed an October 28, 1999 magnetic resonance imaging scan and stated that there was no evidence of any significant nerve root compression, recurrent disc herniation or epidural fibrosis. He opined that his opinions remained unchanged.

By letter dated November 29, 2000, the Office advised appellant that it proposed to terminate his compensation based on the weight of the medical evidence. The Office discussed the findings of Dr. Valentino. Appellant was advised that, if he disagreed with the proposed action, he should submit evidence or argument within 30 days.

Appellant submitted a December 27, 2000 report from a "John J. Logue, Ph.D." who stated that he was a friend and neighbor of appellant. Mr. Logue stated that appellant continued to have disability with the back and left leg, as well as heart problems and diabetes.

In a decision dated February 16, 2001, the Office terminated compensation for wage-loss and medical benefits effective February 25, 2001. The Office found that the weight of the evidence was represented by Dr. Valentino.

On April 1, 2005 the Office received a March 29, 2005 letter from appellant's spouse, who indicated that he was hospitalized. She inquired as to the appeal process regarding compensation payments. The Office responded by letter dated June 17, 2005, stating that appellant apparently had requested an oral hearing by letter dated March 14, 2001. A hearing before an Office hearing representative was held on May 26, 2006.

Appellant submitted a May 26, 2006 report from Dr. Bosacco who stated that he had not seen appellant since 2002, but he had treated him since 1983. Dr. Bosacco noted that appellant had surgeries in 1968, 1971 and 1983, all of which were referable to the work injury and

appellant did report during his visits that his low back problems had improved significantly. He opined that, after reviewing medical records, "[appellant] has never recovered from the original work injury of December 19, 1967 and continues to be symptomatic referable to his work injury diagnoses which would be lumbar sprain and strain with disc herniation, status post surgery x 3."

By decision dated July 19, 2006, the hearing representative affirmed the February 16, 2001 termination decision. He found that the weight of the medical evidence was represented by Dr. Valentino.

Appellant requested reconsideration by letter dated August 10, 2006. He submitted an August 4, 2006 report from Dr. Bosacco who stated that regarding the question of whether appellant still suffers residuals from the December 19, 1967 work injury, Dr. Bosacco had answered the question in the May 26, 2006 report.

In a decision dated November 1, 2006, the Office determined that the request for reconsideration was insufficient to warrant merit review of the claim. The Office found that the evidence submitted was repetitive in nature.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[1] The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.[2] The right to medical benefits is not limited to the period of entitlement to disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.[3]

ANALYSIS -- ISSUE 1

The Office accepted lumbar disc herniation and acute cervical, dorsal and lumbosacral strains from employment injuries on October 7, 1965 and December 19, 1967. The second opinion physician, Dr. Valentino, provided an August 26, 1999 report with an opinion that appellant did not have residuals of the accepted employment injuries. He noted the lack of objective findings based on examination results and diagnostic testing and Dr. Valentino provided a rationalized medical opinion on the issue presented. Appellant did not submit probative medical evidence supporting a continuing employment-related condition or disability. He did not submit any contemporaneous reports from Dr. Bosacco. The December 27, 2000 letter from a neighbor is not competent medical evidence as there is no indication he is a physician as defined under the Act.[4]

[1] *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

[2] *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

[3] *Frederick Justiniano*, 45 ECAB 491 (1994).

[4] *See* 5 U.S.C. § 8101(2).

The weight of the medical evidence in this case is, therefore, represented by Dr. Valentino, the second opinion physician. Based on the evidence of record, the Office met its burden of proof to terminate compensation for wage loss and medical benefits effective February 25, 2001.

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, he must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability which continued after termination of compensation benefits.[5] In this case, appellant submitted a May 26, 2006 report from his attending physician, Dr. Bosacco who does not, however, provide a rationalized opinion based on a complete background. Dr. Bosacco does not provide a complete history of the employment injuries or discuss in detail the medical history. He did not, for example, discuss the 1965 motor vehicle accident. Dr. Bosacco opined that appellant never recovered from the December 19, 1967 employment injury, without providing further detail. To the extent that he opines that appellant continued to be disabled on and after February 25, 2001, Dr. Bosacco does not provide medical rationale in support of such an opinion. Dr. Bosacco generally noted that appellant was seen for low back problems, had lumbar surgeries in 1968, 1971 and 1983 and appellant did not report that he had improved significantly regarding his lower back. He did not discuss appellant's federal employment, his lumbar condition on or about February 25, 2001 or explain why he felt that appellant continued to have an employment-related lumbar condition and why this condition caused disability for the date-of-injury position.

The Board accordingly finds that the report of Dr. Bosacco is of diminished probative value to the issue presented. It is not sufficient to establish a continuing employment-related disability after February 25, 2001.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[6] the Office's regulations provides that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that [the Office] erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by [the Office]; or (iii) constitutes relevant and pertinent evidence not previously considered by [the Office]."[7] Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.[8] Evidence that repeats or duplicates

[5] *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

[6] 5 U.S.C. § 8128(a) (providing that "[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").

[7] 20 C.F.R. § 10.606(b)(2).

[8] 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[9]

ANALYSIS -- ISSUE 2

On reconsideration, appellant did not attempt to show that the Office had erroneously applied or interpreted a point of law or advance a new and relevant legal argument. He submitted an August 4, 2006 report from Dr. Bosacco which does not provide any new and relevant evidence on the issue presented. Dr. Bosacco refers to his May 26, 2006 report without providing any relevant new evidence. Since appellant did not meet any of the requirements of section 10.606(b)(2), the Office properly declined to reopen the case for merit review.

CONCLUSION

The Office met its burden of proof to terminate compensation benefits effective February 25, 2001 based on the medical evidence from the second opinion physician. Appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2) and, therefore, the Office properly refused to reopen the claim for merit review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 1 and July 19, 2006 are affirmed.

Issued: June 4, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[9] *Eugene F. Butler*, 36 ECAB 393 (1984).