United States Department of Labor
Employees' Compensation Appeals Board

A.W., Appellant	)	
and	)	**Docket No. 08-897**
	)	**Issued: March 10, 2010**
DEPARTMENT OF LABOR, OFFICE OF THE ASSISTANT SECRETARY FOR MANPOWER, Washington, DC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 5, 2008 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated August 29 and November 9, 2007 and January 18, 2008. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[1]

ISSUES

The issues are: (1) whether appellant has established that he had disability caused by residuals of the accepted employment injury following the termination of compensation benefits on September 30, 2006; and (2) whether the Office properly refused to reopen appellant's case for reconsideration of his claim under 5 U.S.C. § 8128.

[1] The Board notes that it is reissuing its prior decision and order in this case, which the Board originally issued on January 5, 2009. Appellant filed a petition for reconsideration of the Board's decision in which he noted that the Board made several errors of fact in the decision. The Board granted appellant's petition and has corrected these errors in the instant decision.

FACTUAL HISTORY

Appellant, a 43-year-old manpower development specialist, sustained a heart attack on November 25, 1974. He filed a claim for benefits on January 28, 1975, which the Office accepted for acute myocardial infarction. Appellant was hospitalized and underwent cardiac catheterization. He has not worked for the employing establishment since that time.[2]

In order to determine appellant's current condition and to ascertain whether he still suffered residuals from his accepted condition, the Office referred him for a second opinion examination with Dr. Daniel J. Cassis, Board-certified in internal medicine and a specialist in cardiology. In a September 29, 2004 report, Dr. Cassis stated:

> "[Appellant] first awakened with chest pain on November 25, 1974. It is true that stress can raise someone's blood pressure and heart rate and cause [him] to develop enough angina pectoris if indeed they already have preexisting coronary artery disease. The question as to whether or not stress can, has a mild to moderate obstructive coronary lesion to proceed to a high grade obstruction has been debated for some time. It is my feeling that the patient had preexisting coronary artery disease that was aggravated by the extreme stress he was under."
>
> "I would say he has no residual impairment secondary to the myocardial infarction in 1974. I would say that he has no residual impairment from that myocardial infarction as his overall ejection fraction is quite good. The residual impairment is not secondary to the myocardial infarction but to the fact that he does have severe coronary artery disease…."
>
> "I feel that [appellant] cannot return to work which will require stressful situations both mentally and/or physically…. I feel that [appellant's] condition is such that his current level of functioning cannot be raised by any other request of medical or surgical approaches."

Dr. Cassis reiterated that appellant's functional capacity was unlikely to improve through any type of medical intervention, though he encouraged physical activity from an aerobic standpoint. He recommended that appellant's cardiovascular physician closely monitor his condition.

In an October 22, 2004 supplemental report, Dr. Cassis stated: "[Appellant] has severe coronary artery disease and is unable to do manual work. He could do sedentary work that is of low momentum and physical stress, work that he could do for no more than two to three hours per day."

On October 26, 2005 the Office issued a notice of proposed termination of compensation to appellant. It found that the weight of the medical evidence, as represented by Dr. Cassis' referral opinion, established that appellant's accepted, employment-related myocardial infarction condition had resolved.

[2] Appellant continued to be gainfully employed in various private-sector positions until January 1991.

By letters dated November 4, 2005, January 14, August 28 and September 1, 2006, appellant contested the proposed termination on the grounds that his current condition prevented him from performing any gainful work and that his current condition resulted from residuals of his accepted myocardial infarction condition. He argued that he had been diagnosed with the conditions of arteriosclerotic heart, hypertension, borderline diabetes, anxiety disorder and hypercholesterolemia, all of which were caused by work-related stress and all of which were causally related to his accepted myocardial infarction condition. Appellant did not submit any new medical evidence.

By letter dated June 19, 2006, the Office asked Dr. Kamalakar T. Rao, Board-certified in internal medicine, a specialist in cardiology and the attending physician, to review a copy of Dr. Cassis' reports. It asked Dr. Rao to state: (a) whether he concurred with Dr. Cassis that there was no residual impairment of the 1974 myocardial infarction and that appellant's current condition was due to the progression of his underlying coronary artery disease; and (b) whether, based on appellant's personal habits and genetic history, would he still have developed coronary artery disease if he had not been employed by the employing establishment. On September 12, 2006, Dr. Rao responded "yes" to both questions with a checkmark, indicating that he agreed with Dr. Cassis' opinion.

By decision dated September 28, 2006, the Office terminated appellant's compensation, finding that Dr. Cassis' opinion that represented the weight of the medical evidence.

By letter dated October 23, 2006, appellant requested a review of the written record.

By decision dated February 2, 2007, an Office hearing representative affirmed the September 28, 2006 termination decision. However, he found that the record was unclear as to whether appellant continued to have residuals from employment-related stress. The hearing representative noted that, while the accepted myocardial infarction condition had resolved, Dr. Rao continued to treat appellant for coronary artery disease and Dr. Cassis had indicated that work-related stress had at least partly aggravated or contributed to this condition. The hearing representative therefore remanded to the district Office to obtain a supplemental report from Dr. Cassis to provide sufficient explanation and medical rationale regarding whether or not appellant's coronary artery disease could have been aggravated by his employment-related stress and whether such aggravation was temporary or permanent.

In a June 13, 2007 report, Dr. Cassis stated:

> "In regards to distress causing permanent or temporary aggravation of his coronary artery disease, I would reply the following. Distress could very well have increased the inflammation in his coronary arteries causing a previous mild atheromatous plaque to rupture, and in doing so, the plaque could go from a 10 to 20 percent obstruction to a 70 to 80 to 90 percent obstruction. This of course is impossible to prove at this point in time if it did cause this permanent aggravation of his coronary artery disease. Certainly, it could temporarily aggravate his coronary disease by increasing heart rate and blood pressure therefore leading to myocardial ischemia and/or myocardial infarction."

In response to the Office's query, "If permanent what objective findings/medical findings would support this?", Dr. Cassis noted that this was a difficult question to answer definitively. He stated:

> "In general, a permanent aggravation of coronary artery disease would lead to myocardial infarction and myocardial damage. This would in turn lead to a decrease in contractility and left ventricular ejection fraction. The stress Cardiolite scan performed by Dr. Chalasani on April 17, 2007, revealed no myocardial ischemia. There also was no objective evidence of a decrease in left ventricular fraction or wall motion abnormality. From this study, I would summarize that there was no permanent damage to the left ventricular that occurred during this stressful period when his coronary artery disease was aggravated."

In response to the Office's query, "Is his coronary artery disease at the same level it would have been had he not worked for [the employing establishment]?", Dr. Cassis stated:

> "His coronary artery disease at the same level. It would have been had [he] not worked for [the employing establishment]. Again this is impossible to prove definitively but as I mentioned in the previous question stress could have aggravated his coronary artery disease by causing increased inflammation in coronary arteries leading to a rupture of an atherosclerotic plaque. This in turn could cause a 10 to 20 percent obstruction to go to [an] 80 to 90 percent obstruction in [a] relative[ly] short period of time. Therefore, I would summarize that his coronary artery disease would not have been at this level if he had not worked for [the employing establishment] and been placed under severe stressful situations."

By decision dated August 29, 2007, the Office found, based on Dr. Cassis' supplemental report, that appellant did not have residuals from employment-related stress or coronary artery disease. It stated:

> "This Office has accepted that stress caused a temporary aggravation of [appellant's] coronary artery disease, which resulted in your acute myocardial infarction of November 25, 1974. Medical evidence states that you did not incur heart damage from the myocardial infarction of that date. There is no substantive and unequivocal medical opinion to suggest that your employment caused a permanent aggravation of your coronary artery disease, your currently disabling condition. Dr. Cassis does not provide any objective findings or conclusive medical rationale for his opinion. His opinion is based on conjecture as to the connection between your work and a *permanent* aggravation of coronary artery disease. (Emphasis in the original). [Dr. Cassis'] explanation of the process accurately describes a temporary aggravation, a fact already accepted by the Office. In addition, Dr. Cassis did not discuss the possible involvement of [appellant's] already present cardiac risk factors."

By letter dated September 5, 2007, appellant requested reconsideration. In his 40-page letter appellant stated that the Office had failed to include accepted conditions in the more recent statements of accepted facts, most importantly his preexisting coronary artery disease, and had

failed to credit relevant, probative medical evidence, which indicated that he continued to experience residuals from these accepted conditions.

By letter dated March 18, 2007, received by the Office on September 11, 2007, appellant asked Dr. T.S. Cheng, a Board-certified cardiologist and the physician who performed a May 14, 1975 cardiac catherization on appellant, to answer the following questions: (a) Was the complete obstruction described in the 1975 catherization a result of coronary artery disease?; (b) Did this mean that the coronary artery disease was causally related to the myocardial infarction?; (c) Does the 1977 statement "coronary artery disease", status-post myocardial infarction in November 1974 mean that he did not have coronary artery disease prior to his myocardial infarction of 1974?; and (d) did the January 6, 2006 cardiac catherization show residuals, however slight, from the myocardial infarction?

On March 26, 2007 Dr. Cheng answered "yes" to the first two questions posed by appellant; he stated in response to question 3 that appellant had coronary artery disease prior to his 1974 myocardial infarction; and, in response to question 4, stated: "I suggest you ask your current cardiologist." Appellant also submitted several other documents, which were already in the record and had been considered by the Office in previous decisions.

By decision dated November 9, 2007, the Office denied modification of the July 19, 2007 termination decision. The Office stated that the only new medical evidence appellant submitted with his request for reconsideration was an August 17, 1993 employing establishment work restriction evaluation from Dr. Norberto Schechtmann, in internal medicine and a specialist in cardiology, which the Office received on October 9, 2007.

On November 20, 2007 appellant requested reconsideration. He did not submit any new medical evidence with his request.

By decision dated January 18, 2008, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[3] Following a proper termination of compensation benefits, the burden of proof shifts back to claimant to establish continuing employment-related disability.[4]

ANALYSIS -- ISSUE 1

The Office, in its February 2, 2007decision, remanded to the Office for a supplemental report from Dr. Cassis, the Office's second opinion physician, to explain whether or not

[3] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[4] *John F. Glynn*, 53 ECAB 562 (2002).

appellant's coronary artery disease was aggravated by stressful work factors and if so, whether this aggravation was temporary or permanent. Dr. Cassis opined in a June 13, 2007 report that stressful work factors could have temporarily aggravated his coronary artery disease by increasing heart rate and blood pressure, resulting in myocardial ischemia and/or myocardial infarction. Dr. Cassis noted that appellant underwent a stress test in April 17, 2007, which revealed no myocardial ischemia and advised that there was no objective evidence of a decrease in left ventricular fraction or wall motion abnormality. Based on these test results, he concluded there was no permanent damage to the left ventricular that occurred during the stressful period when his coronary artery disease was aggravated. In response to continued questioning by the Office as to whether appellant's coronary artery disease was at the same level as if he had not worked at the employing establishment, Dr. Cassis advised that stress could have aggravated appellant's coronary artery disease by causing increased inflammation in coronary arteries, leading to a rupture of an atherosclerotic plaque and increased obstruction within a short period of time. He, however, never definitively substantiated that appellant had sustained this rupture of atherosclerotic plaque which caused a permanent increased obstruction of his coronary arteries.

The Board finds that Dr. Cassis' second opinion reports represented the weight of the medical evidence and negated a causal relationship between appellant's current condition and his accepted employment injury. Dr. Cassis opined based on his examination and the objective medical evidence of record that stressful work factors caused a temporary aggravation of appellant's coronary artery disease, which resulted in his acute 1974 myocardial infarction. He did not conclude, however, that work factors definitively caused a permanent aggravation of coronary artery disease, appellant's current condition. The Office properly found that appellant no longer had any residuals from the accepted condition. The Board will affirm the July 19, 2007 decision.

Following the Office's August 29, 2007 decision, appellant requested reconsideration and submitted new medical evidence; *i.e.*, Dr. Cheng's March 26, 2007 response to the questions appellant posed in his March 18, 2007 letter. The Office, however, erroneously stated that Dr. Schechtmann's 1993 work restriction evaluation constituted the only new medical evidence it received with appellant's reconsideration request, notwithstanding the fact that Dr. Schechtmann's report was already in the record. The Office further erred by failing to consider Dr. Cheng's March 26, 2007 report. Any error is harmless, however, as Dr. Cheng's report merely contained a restatement of opinions regarding appellant's condition which were already included in the medical evidence of record and dated back more than 30 years; Dr. Cheng had not personally examined appellant for 32 years. When asked whether he believed that appellant had residuals from these conditions, he advised appellant to consult his current cardiologist. The most current opinion from a cardiologist is that of Dr. Cassis, whom the Office properly credited as representing the weight of medical opinion. Appellant failed to submit a medical report, which outweighed Dr. Cassis' opinion or negated the Office's finding that Dr. Cassis' June 13, 2007 report represented the weight of the medical evidence. Thus the Board will affirm the November 9, 2007 Office decision finding that appellant failed to submit medical evidence sufficient to modify the Office's August 29, 2007 termination decision.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), 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 constituting relevant and pertinent evidence not previously considered by the Office.[5] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[6]

ANALYSIS -- ISSUE 2

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law. He did not advance a relevant legal argument not previously considered by the Office. Appellant did not submit relevant and pertinent evidence not previously considered by the Office. He did not submit any additional medical evidence in connection with his November 20, 2007 reconsideration request. Thus, the request did not contain any new and relevant evidence for the Office to review. In addition, appellant's reconsideration request contains arguments that are cumulative and repetitive of contentions that were presented and rejected by the Office in previous decisions. The Board finds that the Office properly refused to reopen appellant's claim for reconsideration.

CONCLUSION

The Board finds that appellant has not met his burden to establish continuing disability. The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

[5] 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

[6] *Howard A. Williams*, 45 ECAB 853 (1994).

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2008, November 9 and August 29, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 10, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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