U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERRENCE W. BRADY and U.S. POSTAL SERVICE,
POST OFFICE, Huntington Station, NY

Docket No. 01-59; Submitted on the Record;
Issued March 19, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs' refusal to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

On September 3, 1986 appellant, then a 38-year-old letter carrier, sustained an employment-related lumbosacral sprain and L5-S1 radiculitis when he fell in a hole at a construction site while delivering mail. He did not return to work and was placed on the periodic rolls. The Office continued to develop the claim and on October 17, 1995 referred appellant to Dr. Richard Talbott, a Board-certified orthopedic surgeon, for a second opinion evaluation. By letter dated February 5, 1996, the Office informed appellant that it proposed to terminate his compensation, based on the opinion of Dr. Talbott. By decision dated March 7, 1996, the Office terminated appellant's benefits, effective March 31, 1996, on the grounds that his work-related disability had ceased.

Appellant timely requested a hearing that was held on September 23, 1996. In a decision dated November 26, 1996, an Office hearing representative remanded the case to the Office for another second opinion evaluation. Appellant was then returned to the periodic rolls.

Following remand, on July 17, 1997, the Office referred appellant to Dr. John Dowdle, a Board-certified orthopedic surgeon, for a second opinion evaluation.[1] By letter dated December 22, 1997, the Office proposed to terminate appellant's compensation, based on the opinion of Dr. Dowdle. In an August 4, 1998 decision, the Office finalized the termination of appellant's wage-loss compensation, effective August 16, 1998.

On August 11, 1998 appellant requested a hearing that was held on June 23, 1999. By decision dated August 26, 1999, an Office hearing representative affirmed the prior decision. In

[1] Both Dr. Abbott and Dr. Dowdle were furnished with a statement of accepted facts, a set of questions and the medical record.

a letter stamped received by the Office on August 9, 2000, appellant requested reconsideration and submitted additional evidence. In a September 7, 2000 decision, the Office denied appellant's reconsideration request. The instant appeal follows.

The Board finds that the Office did not abuse its discretion in denying appellant's request for review.

The only decision before the Board in this appeal is the Office's decision dated September 7, 2000 denying appellant's application for review. Since more than one year had elapsed between the date of the Office's most recent merit decision dated August 26, 1999 and the filing of appellant's appeal on September 20, 2000, the Board lacks jurisdiction to review the merits of his claim.[2]

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).[3] This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.[4] Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[5]

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.[6] In this case, with his request for reconsideration, appellant submitted[7] a magnetic resonance imaging (MRI) report dated September 22, 1999 which did not discuss the cause of his condition. He also submitted treatment notes from Dr. Thomas Olson which were dated from June 9, 1998 to April 3, 2000, some of which had been previously reviewed by the Office and which merely discussed appellant's symptoms and

[2] 20 C.F.R. § 501.3(d)(2).

[3] 20 C.F.R. § 10.608(a) (1999).

[4] 20 C.F.R. § 10.608(b)(1) and (2) (1999).

[5] 20 C.F.R. § 10.608(b) (1999).

[6] *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

[7] Appellant also submitted duplicates of medical reports that had been previously reviewed by the Office, as well as notes from his physical therapist. The Board has held that a physical therapist's reports are not medical evidence as a physical therapist is not a physician under the Federal Employees' Compensation Act. *Thomas R. Horsfall*, 48 ECAB 180 (1996). Likewise, the submission of evidence or legal argument which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case. *Alton L. Vann*, 48 ECAB 259 (1996).

findings but provided no opinion regarding the cause of appellant's condition or his ability to work. The Board has held that evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[8] Thus, neither the MRI report nor Dr. Olson's treatment notes are sufficient to warrant reopening the case for merit review.

Appellant further submitted reports dated November 17, 1999 and May 5, 2000 from Dr. Quentin J. Durward, a Board-certified neurosurgeon, who merely repeated the opinion he had previously put forth in a June 7, 1999 report that had been reviewed by the Office. The submission of evidence or legal argument which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[9] Therefore, Dr. Durward's reports are likewise insufficient to warrant merit review. The Office, therefore, properly denied appellant's request for reconsideration.[10]

The decision of the Office of Workers' Compensation Programs dated September 7, 2000 is hereby affirmed.

Dated, Washington, DC
March 19, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

[8] *Alton L. Vann, supra* note 7.

[9] *Id.*

[10] As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to him to establish that he had disability causally related to his accepted injury. To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship. Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.