

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STANLEY R. BLACKMAN and DEPARTMENT OF THE NAVY,
MILITARY SEALIFT COMMAND, Bayonne, NJ

*Docket No. 97-2615; Submitted on the Record;
Issued August 18, 1999*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are whether appellant established that his back injury and gastro-intestinal condition were causally related to his employment and whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.¹

The Board has carefully reviewed the case record and the contentions of appellant on appeal. The Board finds that the June 30, 1997 decision of the hearing representative is in accordance with the facts and the law in this case. The Board, therefore, adopts the findings and conclusions of the hearing representative.

On July 12, 1997 appellant requested reconsideration on the grounds that his back condition preexisted the 1992 vehicle accidents in which he was involved and was caused by a steam valve which opened accidentally on October 26, 1990 while he was serving aboard the USS *Neosho*. Appellant contended that his gastro-intestinal problems resulted from "combat conditions" in the Persian Gulf and had been passed on to his son and submitted copies of medical evidence as well as a March 1997 copy of a publication entitled *Persian Gulf Review*.

On August 13, 1997 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant review of its prior decision. The Office noted that the medical evidence was repetitious of that already in the record and that the other evidence was immaterial to the issue of whether appellant's back and intestinal conditions were work related.

¹ This case, claim number A16-244320, was previously before the Board. On March 28, 1996 the Board dismissed appellant's appeal on the grounds that he had timely requested an oral hearing prior to filing his appeal with the Board. Docket No. 96-367.

The Board finds that the Office acted within its discretion in denying merit review of appellant's claim.²

Section 8128(a) of the Federal Employees' Compensation Act³ provides for review of an award for or against payment of compensation. Section 10.138(b)(1) of the Office's federal regulations provides, in pertinent part, that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and the specific issues within the decision which the claimant wishes to Office to reconsider and the reasons why the decision should be changed.⁴

With the written request, the claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.⁵ Section 10.138(b)(2) of the implementing regulations provides that any application for review which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.⁶ Abuse of discretion by the Office is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions that are contrary to both logic and probable deductions from established facts.⁷

In this case, appellant was informed on June 8, 1995 of the need to submit a narrative medical report in support of his claim that his back condition and intestinal problems were caused by work factors. The hearing representative denied the claim on the grounds that no rationalized medical opinion explaining such a causal relationship was submitted.

In support of reconsideration appellant submitted a 1990 lifeboat class schedule, travel orders dated November 21, 1990, medical notes dated October 28, 1991, a copy of an Office letter dated July 8, 1991, a 1990 certificate of sea service and a copy of appellant's August 4, 1997 letter to his congressional representative. All but the medical notes are irrelevant to the issue of whether work factors caused appellant's back and intestinal conditions.

² Appellant's 1990 claim, A2-626540, was accepted by the Office for post-traumatic stress disorder. Appellant was separated from federal employment on February 11, 1992 on grounds of medical disability. On November 21, 1994 the Office reduced appellant's compensation on the grounds that he was capable of performing the duties of a janitor. Appellant requested an oral hearing and appealed to the Board, which on June 20, 1997 remanded the case for an oral hearing to be scheduled. Docket No. 95-1081. The issue of wage-earning capacity is not before the Board.

³ 5 U.S.C. §§ 8101-8193; 5 U.S.C. § 8128(a).

⁴ *Vicente P. Taimanglo*, 45 ECAB 504, 507 (1994).

⁵ 20 C.F.R. § 10.138(b)(1).

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

Similarly irrelevant is appellant's argument on appeal that he cannot handle the duties of a security guard.⁸

The October 28, 1991 notes indicated that appellant was complaining of pain in his left groin and that he was on compensation "for the last year with a back problem." This statement, also reflected in the employing establishment's May 1, 1995 letter to appellant, is inaccurate because appellant was receiving compensation at the time for the accepted condition of post-traumatic stress disorder, caused by an incident on October 26, 1990 aboard the USS *Neosho*. The 1991 note was previously considered by the Office in denying appellant's claim on August 9, 1995. Therefore, this evidence is repetitious and insufficient to require the Office to reopen appellant's claim.⁹

In sum, the Board finds that none of the evidence submitted by appellant in support of reconsideration constitutes a rationalized medical opinion explaining how appellant's back condition and intestinal problems were causally related to his employment. Thus, appellant has not shown that the Office erroneously applied or interpreted a point of law, or advanced a point of law or fact not previously considered by the Office, or submitted relevant and pertinent evidence not previously considered by the Office. Accordingly, the Board finds that the Office properly declined to review appellant's request for reconsideration.¹⁰

The August 13 and June 30, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
August 18, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ Appellant also submitted copies of three issues of the *Persian Gulf Review*. These are also irrelevant to the medical issue of establishing a causal relationship between appellant's back and intestinal conditions and his former employment.

⁹ See *James A. England*, 47 ECAB 115, 119 (1995) (finding that material repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case).

¹⁰ See *Norman W. Hanson*, 45 ECAB 430, 435 (1994) (finding that the Office properly declined to reopen a claim because appellant presented no new and relevant evidence).