UNITED STATES COURT OF VETERANS APPEALS

No. 90-1281

JOHN T. SAYLOCK, APPELLANT,

V.

EDWARD J. DERWINSKI,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

On Appeal from the Board of Veterans' Appeals and on
Appellee's Motion for Summary Affirmance

(Decided September 30, 1992)

John T. Saylock, *pro se.*

James A. Endicott, Jr., General Counsel, *Barry M. Tapp*, Assistant General Counsel, *Andrew J. Mullen,* Deputy Assistant General Counsel, and *Adam K. Llewellyn* were on the pleadings for appellee.

Before NEBEKER, *Chief Judge*, and MANKIN and IVERS, *Associate Judges*.

NEBEKER, *Chief Judge*: This case presents for review a July 11, 1990, Board of Veterans' Appeals (BVA or Board) decision which denied appellant's claim for entitlement to service connection for flat feet. Upon consideration of the pleadings and the record on appeal, the Court concludes (1) that appellant failed to submit new and material evidence sufficient to reopen his claim; and (2) that principles of administrative regularity dictate a presumption that appellant received notice of the September 1949 rating action. We affirm.

Appellant's claim for service connection for his flat feet was originally denied by rating action dated September 29, 1949. That decision reflected consideration of appellant's service medical records, including his induction and separation examinations, and concluded that appellant's flat feet existed prior to induction and were not aggravated by service. R. at 29. *See* 38 U.S.C. § 1153 (formerly § 353). Appellant did not appeal to the Board.

In 1985, appellant, by his own words, sought to "reopen" his claim for service connection for his flat feet, alleging that his condition was aggravated by service. R. at 45. The Regional Office (RO) denied service connection. R. at 49. He sought to reopen his claim again in 1987, this time submitting evidence that he currently suffers from the condition, and alleging that he never received notice that his claim was denied in 1949. The RO again denied entitlement to service connection, finding that appellant had not submitted new and material evidence to reopen his claim. The BVA subsequently denied his claim and, in addressing his contention that the 1949 decision was sent to

the wrong address, found that the address used to provide notice to the veteran of the 1949 rating action was the latest address then of record in any Veterans' Administration (now Department of Veterans Affairs) file. Appellant appealed to this Court.

We note initially that appellant has not submitted new and material evidence to reopen his claim. Material evidence is "relevant and probative of the issue at hand," and new evidence is that which is not "merely cumulative of evidence on the record." *Colvin v. Derwinski*, 1 Vet.App. 171, 174 (1991). Here, evidence submitted by appellant to reopen his claim was primarily cumulative of evidence previously submitted, and, where not cumulative, addressed his present condition and not whether his condition was incurred in or aggravated by service.

As to his contention that he never received notice of the 1949 rating action, principles of administrative regularity dictate a presumption that government officials "have properly discharged their official duties." *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926). We must presume, then, that the Secretary of Veterans Affairs and the RO properly discharged their duties by mailing a copy of the RO decision to the latest address then of record. *See Ashley v. Derwinski*, 2 Vet.App. 306, 309 (1992). Furthermore, the fact that in 1989 he described his action as an attempt to "reopen" his claim carries an implication that he had actual notice of the previous denial.

Accordingly, the Board's decision is AFFIRMED.