U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN SNEED and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, Calif.

Docket No. 96-223; Submitted on the Record;
Issued March 25, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) did not constitute an abuse of discretion.

The Office accepted appellant's claim for low back strain, cervical strain, chronic pain syndrome, psychogenic pain and dysthymic disorder, and aggravation of dependent personality disorder. Appellant returned to light-duty work four hours a day on July 13, 1981 and worked intermittently until November 3, 1981, when she stopped working due to a nonwork-related cardiac condition. Appellant was receiving temporary total disability benefits.

By decision dated September 16, 1993, the Office terminated benefits, stating that the evidence of record established that appellant's work-related condition and disability ceased by September 19, 1993. The Office found that the medical opinions of the second opinion physicians, Dr. Robert L. England, a Board-certified orthopedic surgeon, dated March 18, 1993 and of Dr. Mark J. Young, a Board-certified psychiatrist and neurologist, dated April 6, 1993 constituted the weight of the evidence and established that appellant's work-related disability had ceased.

By letter dated September 24, 1993, appellant requested an oral hearing before an Office hearing representative. The hearing was held on May 16, 1994. By decision dated September 16, 1993, the hearing representative affirmed the September 16, 1993 decision.

By letter dated June 28, 1995, appellant requested reconsideration of the Office's decision and submitted additional evidence. The evidence included a January 27, 1993

prescription for physical therapy, hospital reports dated July 1 and August 3, 1993, describing the status of appellant's condition, bills dated June 22 and 23 and October 25, 1994, the state's January 26, 1995 approval of in-home supportive services, a letter from the Social Security Administration dated July 13, 1995, showing that appellant was receiving total disability benefits from that agency and a report from Dr. Christopher Chiu, appellant's treating physician and a family practitioner, dated May 11, 1994. In his report, Dr. Chiu considered appellant's history of injury, reviewed numerous reports in the record and stated that the fact that appellant tried to continue to work between 1975 and 1981 might have contributed to the exacerbation of the pain and the contiguous problem of her personality disorder and her inability to work in 1981 was probably more related to her inability to cope. He concluded that although appellant's present pains might not actually be due to a physical problem, the February 14, 1975 employment injury should not be held as unimportant to her present condition.

By decision dated September 5, 1995, the Office denied appellant's reconsideration request.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.[1] As appellant filed the appeal with the Board on October 23, 1995, the only decision properly before the Board is the September 5, 1995 decision, denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees' Compensation Act,[2] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.[3] Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.[4] 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.[5] Evidence that does not address the particular issue involved, in this case whether the Office properly terminated appellant's compensation on the grounds that appellant no longer suffered any continuing disability causally related to the February 14, 1975 employment injury, does not constitute a basis for reopening the case.[6]

In the present case, the documents appellant submitted related to billing, social security payments, miscellaneous medical services and prescriptions are irrelevant as they do not address

[1] *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[2] 5 U.S.C. § 8101 *et seq.*

[3] 20 C.F.R. § 10.138(b)(1) and (2).

[4] 20 C.F.R. § 10.138(b)(2).

[5] *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

[6] *Richard L. Ballard, supra* note 5 at 150; *Edward Mathew Diekemper*, 31 ECAB 224, 225 (1979).

whether appellant's work-related disability had ceased. The hospital reports dated July 1 and August 3, 1993 do not provide a rationale explaining a causal relationship between appellant's current disability and the accepted conditions and therefore are also not relevant. Further, Dr. Chiu's May 11, 1994 report is repetitive as it was already submitted in the record, prior to the hearing and considered at length by the Office hearing representative in her decision.

Appellant has not established that the Office abused its discretion in its September 5, 1995 decision by denying appellant's request for a review on the merits of its September 19, 1993 decision under section 8128(a) of the Act, because she has failed to show 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 that she submitted relevant and pertinent evidence not previously considered by the Office.

Accordingly, the decision of the Office of Workers' Compensation Programs dated September 5, 1995 is hereby affirmed.

Dated, Washington, D.C.
March 25, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member