U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SEAN McGOVERN and U.S. POSTAL SERVICE,
POST OFFICE, Rochester, N.Y.

Docket No. 96-1102; Submitted on the Record;
Issued March 5, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

On November 10, 1990 appellant, a 27-year-old mail handler, was lifting sacks of mail when he allegedly began to experience pain in his lower back. On November 13, 1990 appellant, filed a Form CA-1 claim based on traumatic injury, seeking continuation of pay based on the alleged injury he sustained to his lower back due to the employment incident of November 10, 1990.

In a letter to appellant dated December 6, 1990, the Office requested that appellant submit additional information in support of his claim, including a medical report and opinion from a physician, supported by medical reasons, regarding the causal relationship between the reported work incident and alleged injury and disability. The Office informed appellant that he had 30 days to submit the requested information. Appellant did not respond to this letter.

By decision dated January 9, 1991, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that appellant sustained the claimed injury in the performance of duty.

In a letter to the Office dated August 21, 1995, appellant requested an oral hearing.

In a letter to appellant dated September 13, 1995, the Office denied appellant's request for a hearing. The Office stated that appellant's request was untimely, noting that his request was rendered well beyond the 30-day time limit permitted under the Federal Employees'

Compensation Act.[1] The Office stated that appellant could request reconsideration of his claim if he had additional evidence to submit.

In a letter to the Office dated November 11, 1995, appellant requested reconsideration of the Office's January 9, 1991 decision. In this letter, appellant alleged that the employing establishment failed to inform him that his claim had been denied on January 9, 1991.

By decision dated November 16, 1995, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that appellant sustained the claimed injury in the performance of duty.

The Board holds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law; by advancing a point of law or fact not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.[2] 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.[3] 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.[4]

In the present case, appellant failed to show in his November 11, 1995 letter that the Office erroneously applied or interpreted a point of law or fact not previously considered by the Office; nor did he advance a point of law not previously considered by the Office. Neither has he submitted relevant and pertinent evidence not previously considered by the Office. Further, appellant submitted no new and relevant medical evidence with the November 11, 1995 reconsideration request. The issue in this case is medical in nature and must be addressed by a physician. Appellant failed to submit medical evidence in support of his contention that he suffered an employment-related injury on November 10, 1990.[5] Therefore, the Office properly refused to reopen appellant's claim for a review on the merits.

[1] 5 U.S.C. § 8124 (b)(1)

[2] 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.138(b)(2).

[4] *See Eugene F. Butler*, 36 ECAB 393, 398 (1984).

[5] Appellant submitted two Form CA-2a recurrences claims to the Office, dated April 17 and June 10, 1995, and included with these claims a report from a chiropractor, progress notes from a physician and some other documents pertaining to his claim. By letter dated July 26, 1995, the Office informed appellant that because his original claim for compensation, based on a back injury, was denied on November 9, 1991, none of his recurrence claims could be accepted or processed. These letters and documents are included in the case file but are not part of the instant record.

The decision of the Office of Workers' Compensation Programs dated November 16, 1995 is therefore affirmed.

Dated, Washington, D.C.
March 5, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member