U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEROY FORD and DEPARTMENT OF DEFENSE,
DEFENSE MAPPING AGENCY, St. Louis, MO

Docket No. 98-2534; Submitted on the Record;
Issued April 10, 2000

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

By decision dated September 5, 1996, the Office rejected appellant's claim for an employment-related aggravation of his post-traumatic stress syndrome on the basis that the evidence failed to establish that the activities or factors cited by appellant occurred in the performance of duty. Following a hearing held on May 21, 1997 at appellant's request, an Office hearing representative, by decision dated July 9, 1997, found that 25 specified factors cited by appellant involved administrative or personnel matters in which appellant had not established error or abuse by the employing establishment and that 6 specified factors cited by appellant, including harassment by appellant's supervisor were not accepted as factual, since appellant submitted no corroborating proof. The Office hearing representative found: "Since I have found that the factors cited by the claimant as contributing to his emotional condition are either not accepted as factual or are not competent to produce a compensable medical condition, it is not necessary to consider the probative value of the medical evidence thus far submitted in support of the claim."

By letter dated June 30, 1998 appellant, through his attorney, requested reconsideration, contending that the Office hearing representative erred in finding that the factors cited by appellant were not compensable and in finding that appellant failed to establish harassment because he did not pursue a grievance beyond the informal stage. Submitted with the request for reconsideration were a June 30, 1998 affidavit from appellant, a March 15, 1996 letter from appellant to the Department of Veterans Affairs claiming total and permanent disability due to post-traumatic stress disorder and an October 2, 1996 decision from the Department of Veterans Affairs increasing appellant's rating for his service connected post-traumatic stress disorder from 50 to 100 percent disabling.

By decision dated July 17, 1998, the Office found the information submitted was irrelevant, that appellant had not cited error in the interpretation of the law by the Office hearing representative and that the request for reconsideration was not sufficient to warrant reopening of the case for further review of the merits of appellant's claim.

The only Office decision before the Board on this appeal is the Office's July 17, 1998 decision, finding that appellant's application for review was not sufficient to warrant review of its prior decision. Since more than one year elapsed between the date of the Office's most recent merit decision on July 9, 1997 and the filing of appellant's appeal on August 25, 1998, the Board lacks jurisdiction to review the merits of appellant's claim.[1]

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
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> (1) end, decrease, or increase the compensation awarded; or
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> (2) award compensation previously refused or discontinued."

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. 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. 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.[2] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[3]

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

The evidence submitted with the request for reconsideration was either irrelevant, in that it did not address the issue involved, or repetitious of evidence previously submitted. The March 15, 1996 letter from appellant to the Department of Veterans Affairs falls into the first category and the decision from that agency into the second as this decision was submitted at the

[1] 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office final decision being appealed.

[2] *Eugene F. Butler*, 36 ECAB 393 (1984).

[3] *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

May 21, 1997 hearing. The June 30, 1998 affidavit from appellant essentially reiterates the arguments contained in his attorney's June 30, 1998 request for reconsideration.

These arguments do not advance a point of law or fact not previously considered by the Office, but instead contend that the Office hearing representative's July 9, 1997 decision erroneously applied the law to the facts of appellant's case. However, as found by the Office hearing representative, assignment of work duties and work space,[4] disciplinary actions by the employing establishment[5] and performance evaluations[6] are administrative matters, which are not afforded coverage unless error or abuse is shown. Appellant's request for reconsideration does not show such error or abuse. Work underload is not a compensable factor of employment, as it amounts to frustration at not being allowed to work in a more demanding or more interesting work environment.[7] Appellant's request for reconsideration does not establish that the Office hearing representative's July 9, 1997 decision erroneously applied or interpreted a point of law. As the request for reconsideration did not meet one of the three criterias of 20 C.F.R. § 10.138(b)(1), the Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

The decision of the Office of Workers' Compensation Programs dated July 17, 1998 is affirmed.

Dated, Washington, D.C.
April 10, 2000

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[4] *Sandra F. Powell*, 45 ECAB 877 (1994).

[5] *Sharon R. Bowman*, 45 ECAB 187 (1993).

[6] *Kathleen D. Walker*, 42 ECAB 603 (1991).

[7] *Michael Thomas Plante*, 44 ECAB 510 (1993).