U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARA M. LANGLEY and DEPARTMENT OF THE ARMY, DEFENSE DISTRIBUTION DEPOT RED RIVER, Texarkana, TX

Docket No. 98-2043; Submitted on the Record;
Issued February 23, 2000

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM, BRADLEY T. KNOTT

The issues are: (1) whether appellant has met her burden of proof to establish that she was entitled to compensation for wage loss due to her employment-related hearing loss on or after January 29, 1994; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's reconsideration request under 5 U.S.C. § 8128.

On September 30, 1994 appellant filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on August 1, 1991 she first realized that she suffered a hearing loss due to her federal employment.[1] The Office accepted the claim for an 18 percent binaural hearing loss on January 26, 1996.

On September 29, 1997 appellant filed a claim for wage loss for the period January 29, 1994 to September 19, 1997.

By decision dated January 26, 1998, the Office denied appellant's request for wage-loss compensation commencing January 29, 1994. In the attached memorandum, the Office noted that appellant had been a temporary employee whose appointment terminated on January 29, 1994 and that the evidence failed to establish that she had any wage loss due to her accepted August 1, 1991 employment injury.

By letter dated February 23, 1998, appellant's representative requested reconsideration. In support of her request appellant submitted a new statement dated February 1998, copies of her previous statements, five SF-50's, a February 1995 statement from James Keeton, a copy of a statement of accepted facts, audiograms from her employing establishment and clinic notes from her employing establishment's health clinic. In a statement dated February 1998, appellant contended that since the employing establishment had caused her hearing loss, she was entitled

[1] Appellant was a temporary employee whose appointment terminated effective January 29, 1994.

to be made a permanent employee as well as arguing that she had been a permanent employee from March 23, 1981 to March 24, 1984.

On May 28, 1998 the Office denied appellant's request for reconsideration on the basis that the evidence submitted was duplicative and insufficient to warrant review of the prior decision.

The Board finds that appellant has not met her burden of proof to establish that she is entitled to wage-loss compensation due to her employment-related hearing loss on or after January 29, 1994.

As used in the Federal Employees' Compensation Act,[2] the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[3] Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[4] An employee who has a physical impairment causally related to his federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to compensation for loss of wage-earning capacity.[5] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[6]

The employing establishment terminated appellant's employment due to the expiration of her appointment effective January 29, 1994. The record establishes that appellant stopped work on January 29, 1994 because she was a temporary employee, and it was the end of her appointment, and not due to any residuals or disability due to her accepted employment hearing loss. Her loss of hearing does not establish that appellant was prevented from returning to her date-of-injury position or caused any incapacity to earn the wages she was receiving at the time

[2] 5 U.S.C. §§ 8101-8193.

[3] *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17) (defining "disability").

[4] *See Fred Foster*, 1 ECAB 21, 24-25 (1947) (finding that the Act provides for the payment of compensation in disability cases upon the basis of the impairment in the employee's capacity to earn wages, and not upon physical impairment as such).

[5] *See Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that appellant had sustained a permanent impairment of his legs because of work-related thrombophlebitis, it did not demonstrate that his condition prevented him from returning to his work as a chemist or caused any incapacity to earn the wages he was receiving at the time of injury).

[6] *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

of the accepted employment injury.[7] Appellant has not submitted any medical evidence to support her contention that she is disabled from working due to her hearing loss. Thus, the Board finds that the Office properly determined that appellant was not entitled to compensation for wage loss due to her accepted employment injury on or after January 29, 1994. There is no medical evidence to support that she became totally disabled due to her accepted employment injury.

The Board also finds that the Office properly denied appellant's reconsideration request under 5 U.S.C. § 8128.

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, advancing a point of law or fact not previously considered by the Office, or 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.[8] 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.[9] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[10]

In a February 23, 1998 letter from her representative, appellant submitted a new statement dated February 1998, copies of her previous statements, five SF-50's, a February 1995 statement from James Keeton, a copy of a statement of accepted facts, audiograms from her employing establishment and clinic notes from her employing establishment's health clinic. None of the evidence submitted by appellant is relevant to the issue of whether appellant's disability on and after January 29, 1994 was due to her accepted employment injury. Furthermore, the evidence submitted is duplicative of the evidence contained in the record and previously considered by the Office. Thus, the Board finds that the Office properly denied appellant's request for reconsideration on the basis that the evidence submitted was duplicative and irrelevant to the issue of whether she was totally disabled due to her accepted employment injury.

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[7] *Burney L. Kent*, 6 ECAB 378 (1953) (loss of earnings due to limited economic opportunity in community of claimant's choice rather than to physical impairment); *see Louise Moore*, 7 ECAB 323 (1954) (claim properly denied where claimant failed to show that eczema, attributable to her employment, had caused any loss of wage-earning capacity or that her resignation from federal employment and subsequent unemployment had anything to do with the eczema); *Casimiro Otero*, 7 ECAB 86 (1954) (termination of compensation proper where claimant worked until he was discharged for misconduct and medical evidence disclosed no more residual disability); *James P. Pearcy*, 6 ECAB 827 (1954) (claim for compensation for specified periods of unemployment was properly rejected for lack of proof of loss of wage-earning capacity); *Johanna Rauch*, 6 ECAB 435 (1954) (claim filed upon termination of job properly rejected where evidence failed to disclose residual disability attributable to employment injury).

[8] 20 C.F.R. § 10.138(b)(2).

[9] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[10] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decisions of the Office of Workers' Compensation Programs dated May 28 and January 26, 1998 are hereby affirmed.

Dated, Washington, D.C.
February 23, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member