U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EVA M. SLAUGHTER and U.S. POSTAL SERVICE,
POST OFFICE, Buffalo, NY

Docket No. 99-1906; Submitted on the Record;
Issued February 3, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's claim for compensation for the period commencing August 3, 1992; (2) whether 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), constituted an abuse of discretion; and (3) whether the Office abused its discretion in denying appellant's request for a discretionary second hearing under section 8124 of the Federal Employees' Compensation Act.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the August 10, 1998 decision of the Office hearing representative, finalized on August 10, 1998, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.[1]

By letter dated October 12, 1998, appellant requested an oral hearing before an Office hearing representative.

By letter dated December 17, 1998, appellant requested reconsideration of the Office's decision and submitted a medical report from Dr. Galler dated January 14, 1998, and the results of magnetic resonance imaging (MRI) scans dated November 18, 1998, of the left shoulder and cervical spine showing, in part, a nonspecific effusion of the left shoulder and a large left paracentral disc protrusion at the C6-7 level.

[1] The Board found that the reports of Dr. Marvin Galler, a Board-certified internist with a specialty in cardiovascular medicine, contained inconsistencies regarding the amount of weight appellant could lift in June 1992 and no evidence of record corroborated appellant's allegation that her work requirements exceeded her 15-pound lifting restrictions.

By letter dated October 20, 1998, the Office stated that, since appellant had an oral hearing on June 23, 1998 in Buffalo, New York, appellant was not entitled to another hearing.

By decision dated March 5, 1999, the Office denied appellant's reconsideration request.

By letters dated April 13 and 29, 1999, appellant reiterated her request for an oral hearing before an Office hearing representative.

By decision dated April 21, 1999, the Branch of Hearings and Review denied appellant's request for a second hearing, whether it was oral or a review of the written record, because a previous oral hearing was completed by the Branch on the issue of whether appellant was disabled for limited duty for the relevant time period and a decision was issued on the that issue on August 10, 1998. The Branch added that appellant could pursue her case further through the reconsideration process or by an appeal to the Board.

The Board finds that the Office did not abuse its discretion in refusing to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

To require the Office to reopen a case for merit review under section 8128(a) of 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 appellant was totally disabled as of August 3, 1992 due to her accepted condition of costochondritis, does not constitute a basis for reopening the case.[6]

In the present case, Dr. Galler's January 14, 1998 report had previously been submitted and therefore is repetitious and the November 18, 1998 MRI scans do not address whether appellant was disabled and therefore are not relevant. Appellant has, therefore, not established that the Office abused its discretion in its March 5, 1999 decision by denying appellant's request for a review on the merits of its August 10, 1998 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,

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

that she advanced a point of law or a fact not previously considered by the Office or that she submitted relevant and pertinent evidence not previously considered by the Office.

Addressing the third issue, the Board finds that the Office properly denied appellant's request for a second hearing.

Section 8124(b)(1) of the Act provides that "a claimant not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."[7] Section 10.615 of the Office's federal regulations implementing this section of the Act, provides that a claimant shall be afforded the choice of an oral hearing or a review of the written record by a representative of the Secretary.[8] Thus, appellant has a choice of requesting an oral hearing or a review of the written record pursuant to section 8124(b)(1) of the Act and its implementing regulations.[9]

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[10] Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act, which provided the right to a hearing,[11] when the request is made after the 30-day period for requesting a hearing,[12] and when the request is for a second hearing on the same issue.[13]

The Office's Branch of Hearings and Review, in its April 21, 1999 decision, noted that appellant had previously requested and was granted a hearing before the Office on the same issue. Following this hearing which was held on June 23, 1998, an Office hearing representative issued the August 10, 1998 decision which affirmed the Office's November 22, 1997 decision. In the April 21, 1999 decision, the Branch noted that appellant had already received an oral hearing by the Branch on the issue of whether she was disabled for limited duty for the relevant time period and that appellant was not, as a matter of right, entitled to another review by the Branch on the same issue. The Branch thus properly denied appellant's request for a second hearing in its April 21, 1999 decision.

[7] 5 U.S.C. § 8124 (b)(1).

[8] 20 C.F.R. § 10.615.

[9] *Gus N. Rhodes*, 43 ECAB 268 (1991).

[10] *Henry Moreno*, 39 ECAB 475, 482 (1988).

[11] *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

[12] *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

[13] *Frederick Richardson*, 45 ECAB 454, 466 (1994); *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

The decisions of the Office of Workers' Compensation Programs dated April 21 and March 5, 1999 and August 10, 1998 are hereby affirmed.

Dated, Washington, D.C.
February 3, 2000

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member