U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIE D. ROBERSON and U.S. POSTAL SERVICE, DALLAS BULK MAIL CENTER, Dallas, TX

Docket No. 99-2260; Submitted on the Record; Issued April 27, 2001

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT, A. PETER KANJORSKI

The issues are: (1) whether appellant has a permanent impairment of the lower extremities causally related to his April 18, 1991 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

This case is before the Board for the second time. In a decision dated May 11, 1998, the Board affirmed the Office's decisions dated October 12, July 21 and June 22, 1995 denying appellant's claim for a schedule award. The Board further affirmed the Office's May 21, 1995 decision denying appellant's request for a hearing under section 8124.[1] The findings of fact and conclusions of law are hereby incorporated by reference.

By letter dated August 15, 1998, appellant requested reconsideration. In support of his request, appellant submitted a report dated May 15, 1998 from Dr. Jonathan D. Walker, a Board-certified physiatrist and neurologist, who related that he disagreed with the Board's May 11, 1998 decision. Dr. Walker stated:

> "As best I can tell, they are saying that [appellant] was turned down because I did not relate his injuries to the date of April 18, 1991 when he was injured at the [employing establishment]. So far as I know, this is the only injury he has had and therefore all comments about [appellant's] continuing severe disability are related to that injury."

In a letter dated August 20, 1998, the Office requested that Dr. Walker provide an opinion regarding any employment-related condition which "may affect the function of [appellant's] lower extremity (or subordinate anatomic component)." The Office informed

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[1] *Willie D. Roberson*, Docket No. 96-300 (issued May 11, 1998).

Dr. Walker of the applicability of American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) in determining the extent of any permanent impairment.

Appellant submitted a report dated September 16, 1998 from Dr. Michael McHenry, a Board-certified physiatrist, who noted that appellant related a history of a contusion, broken sinus cavity and damaged lobes due to an April 18, 1991 employment injury. He noted, "I have no records to confirm any of this. I have a small note from Dr. Walker, but that is all." Dr. McHenry found that appellant had bilateral hip and knee pain, greater on the left. He listed range of motion findings for appellant's lower extremities and stated:

> "We have done an impairment rating. [Appellant] has nothing for specific diagnosis because I do [not] have any records that he has any specific diagnoses except for some post[-]traumatic head disorder, but that is not brought into the evaluation at all because I was only asked to do [an] examination of his bilateral legs. The diagnoses that I have were post[-]traumatic encephalopathy and post[-]traumatic pain syndrome, but those are not in question here."

Dr. Walker listed range of motion findings on examination and concluded that appellant had a 15 percent whole person impairment "secondary to the injury sustained on April 18, 1991."

By decision dated December 15, 1998, the Office denied modification of its prior decision. The Office noted that the Federal Employees' Compensation Act did not provide a schedule award for impairments of the head or brain. The Office further found that appellant had not submitted sufficient evidence to establish that his April 18, 1991 employment injury, accepted for a contusion of the head and organic brain syndrome, caused pain in his upper or lower extremities, back, eyes or ears.

In a letter dated June 21, 1999, appellant requested reconsideration. By decision dated June 22, 1999, the Office denied his request for merit review of its December 15, 1998 decision.

The Board finds that appellant has not established that he has a permanent impairment of the lower extremities causally related to his April 18, 1991 employment injury.

The Office accepted appellant's claim for a contusion of the head and organic brain syndrome. Schedule awards, however, are not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.[2] As neither the Act nor the regulations provide for the payment of a schedule award for injuries to the head or brain, claimant is not entitled to such an award.[3]

In 1960, amendments to the Act modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member.

[2] *George E. Williams*, 44 ECAB 530 (1993).

[3] *Id*.

Consequently, claimant may be entitled to a schedule award for a member of the body covered by the schedule even though the cause of the impairment originated in the head or brain.[4]

In this case, Dr. Walker, appellant's attending physician, generally stated in a report dated May 15, 1998 that all of appellant's disability was due to his April 18, 1991 employment injury because it was his only injury. However, the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to establish causal relationship.[5] Dr. Walker did not provide any rationale for his conclusion or discuss the extent, if any, of appellant's permanent impairment of the lower extremities. Consequently, his opinion is insufficient to meet appellant's burden to prove that he is entitled to a schedule award.

In a report dated September 16, 1998, Dr. McHenry related that he had been requested to evaluate the extent of any impairment of appellant's lower extremities but did not have any relevant medical records or diagnoses regarding the lower extremities. He concluded that appellant had a 15 percent whole person impairment[6] "secondary to the injury sustained on April 18, 1991." Dr. McHenry, however, did not provide any rationale for his finding that appellant's impairment of the lower extremities was causally related to his April 18, 1991 employment injury and thus his opinion is entitled to little weight.[7] Additionally, Dr. McHenry noted that he did not have the appropriate medical records, factual history or diagnoses necessary to render an opinion. As the record contains no credible evidence establishing that appellant suffered any impairment of the lower extremities causally related to his accepted employment injury, the Office properly denied his claim for a schedule award.

The Board further finds that the Office properly denied appellant's request for reconsideration under section 8128.

Section 10.606 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.[8] Section 10.608 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.[9]

In his request for reconsideration, appellant contended that the report of Dr. McHenry established that he was entitled to a schedule award. The Office, however, previously considered

[4] *Id*.

[5] *Thomas R. Horsfall*, 48 ECAB 180 (1996).

[6] The Act does not provide for impairments of the whole person. 5 U.S.C. § 8107(c).

[7] *Jean Culliton*, 47 ECAB 728 (1996); *Roger Dingess*, 47 ECAB 123 (1995).

[8] 20 C.F.R. § 10.606(b)(2).

[9] 20 C.F.R. § 10.608(b).

and rejected appellant's argument. Therefore, appellant's contentions are repetitious and do not constitute a legal argument sufficient to require reopening of the case for merit review.

Abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from known facts.[10] Appellant has made no such showing here and thus the Board finds that the Office properly denied his application for reconsideration of his claim.

The decisions of the Office of Workers' Compensation Programs dated June 22, 1999 and December 15, 1998 are hereby affirmed.

Dated, Washington, DC
April 27, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] *Rebel L. Cantrell*, 44 ECAB 660 (1993).