U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARLENE LOYE and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Greensboro, NC

Docket No. 00-924; Submitted on the Record;
Issued February 16, 2001

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

The Board has duly reviewed the case record and finds that the Office acted within its discretion in denying appellant's request for reconsideration.

The only decision before the Board in this appeal is the Office's decision dated October 14, 1999 denying appellant's application for review. As more than one year elapsed between the date of the Office's most recent merit decision, dated and finalized on October 2, 1998, and the filing of appellant's appeal, postmarked November 2, 1999 and received by the Board on November 30, 1999, the Board lacks jurisdiction to review the merits of appellant's claim.[1]

Section 10.606 of Title 20 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 point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[2] Section 10.608 provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.

On March 26, 1997 appellant, then a 41-year-old mail clerk, filed a notice of traumatic injury alleging that on February 24, 1997 she developed a skin condition after exposure to tar fumes in the performance of duty. In a decision dated September 4, 1997, the Office denied her

[1] 20 C.F.R. § 501.3(d)(2).

[2] 20 C.F.R. § 10.606(b).

claim for a skin condition on the grounds that she had submitted insufficient factual and medical evidence to support her claim.

By letter dated September 24, 1997, appellant requested an oral hearing and submitted additional factual and medical evidence. In a decision dated October 2, 1998, an Office hearing representative accepted that on February 24, 1997 appellant was exposed to fumes through the ventilation system from asphalt work on the roof. He found that, while appellant had submitted a medical report from a physician who noted that she had "contact with chemicals" and diagnosed severe contact dermatitis, the record did not contain a rationalized medical opinion addressing how appellant's skin condition was causally related to her exposure to fumes while at work.

By letter dated September 29, 1999, appellant requested reconsideration of the Office's October 2, 1998 decision and submitted additional evidence in support of her request. In a decision dated October 14, 1999, the Office found that the evidence submitted was insufficient to warrant review of its prior decision.

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.[3]

In support of her request for reconsideration, appellant submitted numerous copies of documents previously submitted to the record and considered by the Office. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.[4]

New to the record, however, are two prescription slips from appellant's treating physician, Dr. Mark S. Cresenzo, a Board-certified internist. In a note dated July 9, 1998, he stated that appellant was "unable to tolerate tar fumes." In a follow-up note dated July 16, 1998, Dr. Cresenzo stated that appellant "has skin hypersensitivity to tar exposure documented by [a] dermatologist" and referenced the evaluation by appellant's dermatologist, Dr. John Hall, which was previously considered by the Office.

It is not disputed that appellant was exposed to tar fumes on February 24, 1997 or that she was subsequently diagnosed with a skin condition. However, the Office denied appellant's claim on the grounds that she failed to submit any medical evidence which explained the causal relationship, if any, between her employment-related tar fume exposure and her diagnosed skin condition. Dr. Cresenzo merely noted appellant's exposure to tar fumes. He failed to provide any opinion on the relevant issue in this case which is how appellant's exposure to tar fumes caused or contributed to her contact dermatitis.

[3] *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

[4] *See James A. England*, 47 ECAB 115 (1995); *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

Evidence which does not address the particular issue involved does not constitute a basis for reopening the claim.[5] As Dr. Cresenzo did not offer any opinion on the cause of appellant's conditions in either his July 9 or July 16, 1998 notes, they are insufficient to require the Office to reopen appellant's claim for a review of the merits.[6] As appellant failed to raise substantive legal questions or to submit new relevant and pertinent evidence not previously reviewed by the Office, the Office acted within its discretion in refusing to reopen appellant's claim for review of the merits.

The October 14, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 16, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

[5] *Richard L. Ballard*, 44 ECAB 146, 150 (1992).

[6] *Id.*