U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES W. APMANN and U.S. POSTAL SERVICE,
POST OFFICE, San Francisco, CA

*Docket No. 02-839; Submitted on the Record;*
*Issued August 26, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The only decision before the Board on this appeal is the Office's February 1, 2001 decision denying appellant's application for a review on the merits of its November 5, 1999 decision wherein the Office denied appellant's claim for an emotional condition on the basis his medical condition did not arise in the performance of duty. The Office noted that appellant claimed that he suffered from stress as a result of the Office's decision to terminate his compensation based on the refusal of suitable employment, a decision which was later vacated. The Office determined that matters involving the processing of workers' compensation claims by the employing establishment or the Office generally do not involve appellant's day-to-day or specially assigned duties and, thus, the resulting claimed emotional condition did not occur in the performance of duty to afford coverage under the Federal Employees' Compensation Act.[1] Because more than one year has elapsed between the issuance of the Office's November 5, 1999 merit decision and January 29, 2002, the date appellant filed his appeal with the Board, the

[1] By decision dated October 20, 1999, the Office terminated appellant's compensation under 5 U.S.C. § 8106(c)(2) on the basis that appellant refused an offer of suitable employment. In a September 15, 2000 decision, an Office hearing representative reversed the Office's decision of October 20, 1999 and reinstated compensation benefits.

Board lacks jurisdiction to review the November 5, 1999 merit decision denying appellant's claim of an emotional condition on the basis that it did not arise within the performance of duty.[2]

Under section 8128(a) of the Act,[3] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent new evidence not previously considered by the Office.[4] Section 10.608(a) 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.[5] 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.[6] Evidence that does not address the particular issue involved does not constitute a basis for reopening the case.[7]

In his reconsideration request of November 1, 2000, appellant argued that the Employees' Compensation Appeals Board has held that the employing establishment can be accountable when error leads to an emotional condition. He argued that his being terminated from compensation was a substantial benefit to the employer. Appellant asserted that the business of termination of workers' compensation would have eliminated the employing establishment's contribution to lost wages, which was a substantial employer benefit. He then argued that the employing establishment's action in offering a job to him and the Office's action in finding the job to be suitable was a willful collusion by officials to violate his rights. Appellant stated that the July 28, 1994 job offer tendered by the employing establishment and found suitable by the Office, as presented, required a response or suffer the consequences.

Appellant also submitted a copy of an October 29, 1999 letter to the U.S. Attorney which essentially outlines how his termination based on refusal of suitable work came about, his contention that he was not afforded an opportunity to provide his reasons for a refusal, the effect of his learning that part of his claim file had not been transferred to the Boston district office, the effect of his learning that the CA-2, claiming his psychiatric condition was missing from the file.

The Office properly found that appellant's November 1, 2000 letter requesting reconsideration and the evidence submitted therein was insufficient to warrant a merit review of its prior decision dated November 5, 1999. In the instant case, the Office had denied appellant's

---

[2] *See* 20 C.F.R. § 501.3(d)(2).

[3] 5 U.S.C. § 8128(a).

[4] 20 C.F.R. § 10.606(b)(2) (1999). *See generally* 5 U.S.C. § 8128(a).

[5] 20 C.F.R. § 10.608(a) (1999).

[6] *Howard A. Williams,* 45 ECAB 853 (1994).

[7] *Richard L. Ballard,* 44 ECAB 146, 150 (1992); *Edward Mathew Diekemper*, 31 ECAB 224, 225 (1979).

claim on the grounds that the termination of his compensation based on the refusal of suitable work was not established as a compensable factor of employment. The arguments advanced by appellant in support of his request for reconsideration are not relevant or pertinent to evidence previously considered by the Office. Although appellant advanced legal arguments to be determined in his request, none of them raised a concern that the Office had erroneously applied or interpreted a point of law in his case. His allegations that the employing establishment had an interest in terminating his compensation and thus, all the subsequent actions of the Office, which led to the termination of his compensation benefits based on the refusal of suitable work, should be considered a factor of employment are without merit. The Office properly noted that an employer's benefit is derived when appellant is actually employed and carrying out the employer's mission. In this case, the record reflects that since January 8, 1983, appellant was on the periodic compensation rolls based upon total disability. Accordingly, he was not working or providing any benefit to the employing establishment. Moreover, in its decision dated November 5, 1999, the Office properly noted that the law pertaining to reactions which occur as the result of matters involving the processing of workers' compensation claims by the employing establishment or the Office generally did not involve compensable factors of employment. The processing of a claim for workers' compensation does not arise in the performance of duty because it does not relate to the employee's day-to-day or specially assigned duties.[8] While appellant provided a chronology and argued about the alleged improprieties of the Office in the process of terminating his compensation based on the refusal of suitable employment, these arguments simply do not address the relevant issue in this case, which is whether appellant has established an emotional condition arising out of the performance of his work duties. The Office properly noted that the arguments advanced by appellant have no relation to his day-to-day duties and, therefore, were not compensable factors of employment. Appellant's reconsideration request did not provide new factual or legal evidence that his termination of benefits based on a refusal of suitable employment occurred in the performance of duty.

Generally, an abuse of discretion is shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken, which are contrary to both logic and probable deductions from established facts.[9] The Office did not abuse its discretion in denying a merit review in this case.

[8] *O. Paul Gregg*, 46 ECAB 624 (1995); *Thomas J. Costello*, 43 ECAB 951 (1992); *George A. Ross*, 43 ECAB 346 (1991).

[9] *Daniel J. Perea*, 42 ECAB 214 (1990).

The decision of the Office of Workers' Compensation Programs dated February 1, 2001 is affirmed.

Dated, Washington, DC
August 26, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member