U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANTHONY GREEN and U.S. POSTAL SERVICE,
POST OFFICE, Washington, DC

*Docket No. 00-2126; Submitted on the Record;*
*Issued February 27, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On December 4, 1998 appellant, then a 39-year-old letter carrier, filed a notice of occupational disease and claim for continuation of pay (Form CA-2) alleging that the duties of his position, "extensive walking, lifting has aggravated" his cervical spine degenerative disease. On the reverse of the form, appellant's supervisor indicated that appellant stopped working on November 25, 1998 and had not returned.[1]

On February 22, 1999 the Office denied appellant's claim. The Office found that, while the evidence of file supported that appellant experienced the claimed work factor, the evidence did not establish that a condition had been diagnosed in connection with the work factor, because there was no medical evidence submitted in the claim. Therefore, it was determined that an injury within the meaning of the Federal Employees' Compensation Act was not demonstrated.

In a letter received on February 22, 2000, appellant requested reconsideration. He forwarded three medical reports and a statement from Felicia Green, a former coworker, in support of his request. In a report dated January 18, 1999 from Dr. Ganesh Prabhu, a general surgeon, it was noted that appellant had been under his care for radiculopathy due to severe degenerative disc disease involving the cervical and lumbar vertebrae. He noted that he felt appellant had reached his maximum medical benefit and further treatment would not better his prognosis. Dr. Prabhu further noted that appellant should discontinue his current job as letter carrier and seek alternate, sedentary employment.

[1] Appellant had previously been employed as a warehouseman for the U.S. Air Force. He sustained an injury to his cervical spine while in the U.S. Air Force. The Department of Veterans Affairs accepted the claim and found appellant to be entitled to a military service-connected disability of 60 percent.

By report dated February 10, 2000, Dr. Brian M. Gordon, an orthopedist, provided a report of appellant's condition. He noted appellant's work history with both the U.S. Air Force and the U.S. Postal Service. Dr. Gordon advised that appellant felt that his job with the employing establishment exacerbated his neck and low back pain. He also reviewed x-rays dated March 25, 1998. Dr. Gordon found that appellant had "an apparent congenital fusion from C2-3." He also noted that appellant had "significant degenerative disc changes C3-4, 4-5 and 5-6 with decreased disc height" and a "loss of the normal cervical lordosis." Dr. Gordon found that appellant had a "significant spinal stenosis at C3-4 graded severe and moderate to severe at C6-7." He also found that appellant had a "neural foraminal involvement at several levels with significant cervical spondylosis and degenerative disc disease at multiple levels. Dr. Gordon also noted that appellant also has evidence of congenital fusion at the C2-3 level, as well as C5-6. He stated that manual labor jobs would most likely exacerbate appellant's condition, given his physical condition.

In a report dated March 27, 2000, Dr. Frank L. Genovese, a Board-certified neurosurgeon, notes that a review of magnetic resonance imaging (MRI) scan of the cervical spine revealed "significant cord compression or what appears to be secondary changes intrinsic to the cord at C3-4 and C6-7."

In a May 22, 2000 decision, the Office denied appellant's request for reconsideration, without a merit review, on the grounds that the evidence submitted in support of the request for reconsideration was immaterial.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.[2] As appellant filed his request for an appeal on May 31, 2000, the only decision before the Board is the May 22, 2000 decision denying appellant's request for reconsideration on the merits.

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

Section 10.606(b)(2) 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 specific point f 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.[3] Section 10.608(b) 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.[4]

Appellant's request for reconsideration failed to show that the Office erroneously applied or interpreted a point of law. Additionally, his request for reconsideration did not advance a legal argument not previously considered by the Office.

[2] 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[3] 20 C.F.R. § 10.606(b)(2)(1999).

[4] 20 C.F.R. § 10.606(b)(2)(1999).

In his request for reconsideration, appellant submitted medical reports from three doctors. While all three doctors noted that appellant suffered from severe degenerative disc disease in the cervical spine, and Drs. Prabhu and Gordon indicated that appellant should discontinue his job as a letter carrier, as manual labor jobs would most likely exacerbate appellant's condition, no doctor gave a specific opinion as to the cause of appellant's condition. While Dr. Gordon noted appellant's complaint that his work aggravated his condition, he did not provide his own opinion. Therefore, none of the reports submitted along with the reconsideration request constitute relevant evidence.

Consequently, appellant has not established that the Office abused its discretion in its May 22, 2000 decision by refusing to reopen his case for merit review under 5 U.S.C. § 8128(2).

Accordingly, the May 22, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.

Dated, Washington, DC
February 27, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member