U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES D. McCOMB and DEPARTMENT OF THE ARMY, ANNISTON ARMY DEPOT, Anniston, AL

Docket No. 00-2146; Submitted on the Record;
Issued February 5, 2002

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further review of the merits of his claim under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record in this appeal and finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for merit review.

This case has previously been on appeal before the Board. In its June 3, 1999 decision, the Board found that the Office properly terminated appellant's compensation benefits effective March 29, 1998 on the grounds that he refused an offer of suitable work pursuant to section 8106(c) of the Federal Employees' Compensation Act.[1] The Board specifically found that appellant was capable of performing the duties of a material handler and that the position was within the restrictions set by appellant's treating physician. In addition, the Board noted that in further accordance with the recommendations of appellant's physician, the Office rehabilitation counselor had been instructed by the Office to provide appellant with shoe inserts for walking and standing and to ensure that the work area was padded.

By letters dated July 28 and October 21, 1999, appellant requested reconsideration of the Office's prior decision and submitted additional evidence and arguments in support of his claim. In a decision dated November 5, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was cumulative and thus insufficient to warrant review of its prior decision.

The Board finds that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

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[1] Docket No. 98-2145 (issued June 3, 1999).

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 either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (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.[2] Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[3]

Appellant's request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Instead, appellant asserted that he was never contacted by the rehabilitation counselor assigned to him for the purpose of obtaining shoe inserts and ensuring that the work area would be padded and that therefore, he had been denied due process. Appellant further asserted that he was undergoing financial hardship as a result of the Office's failure to provide him with due process and that he was ready and willing to return to work in a medically suitable position, if one could be identified. The arguments were previously raised before the Office and before the Board and, therefore, are repetitious. The submission of evidence or legal argument which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[4] Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

In addition, appellant did not submit any relevant and pertinent new evidence not previously considered by the Office, but rather submitted duplicate copies of letters already contained in the record or which contained repetitious arguments. Consequently, this evidence is not sufficient to warrant reopening the record for merit review.

Inasmuch as appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a point of law not previously considered by the Office or to submit relevant and pertinent evidence not previously considered by the Office, the Office properly refused to reopen appellant's claim for a review on the merits.

[2] 20 C.F.R. § 10.606(b)(2) (1999).

[3] 20 C.F.R. § 10.608(b) (1999).

[4] *Linda I. Sprague*, 48 ECAB 386 (1997); *Bertha J. Soule (Ralph G. Soule)*, 48 ECAB 314 (1997); *David E. Newman*, 48 ECAB 305 (1997); *Alton L. Vann*, 48 ECAB 259 (1996).

The November 5, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 5, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member