U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN A. HECHT and U.S. POSTAL SERVICE,
POST OFFICE, San Francisco, CA

Docket No. 01-1279; Submitted on the Record;
Issued January 18, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further consideration of the merits, pursuant to 5 U.S.C. § 8128(a).

This case is before the Board for the second time. Previously, the Board affirmed an October 10, 1996 decision of the Office on the grounds that appellant failed to supply sufficient medical evidence which causally related the development of appellant's back and arm conditions to factors of his federal employment.[1] The Board also affirmed the Office's decisions of March 19 and January 28, 1997 on the basis that the Office had properly denied appellant's requests for reconsideration under section 8128. On August 17, 1999 the Board issued an order denying petition for reconsideration finding that appellant had not established any error of fact or law warranting further reconsideration. The facts and circumstances of the case up to that point are set forth in the Board's prior decisions and are incorporated herein by reference.

After the Board's August 17, 1999 order denying reconsideration, appellant requested reconsideration by letter dated December 14, 1999. Appellant also submitted a January 4, 2000 medical report from Dr. Marilyn M. Robertson, a Board-certified neurologist. By decision dated June 29, 2000, the Office denied appellant's request for merit review, finding that the evidence submitted was repetitious or immaterial in nature.

The Board finds that the Office acted within its discretion in refusing to reopen appellant's case for further consideration of the merits of his claim.

[1] Docket No. 97-1708 (issued February 24, 1999). The October 10, 1996 decision addressed appellant's occupational disease claims of August 3, 1994, in which appellant attributed his tendinitis of both arms to factors of federal employment, and an occupational disease claim of March 15, 1995 in which appellant attributed his spinal condition to factors of federal employment.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[2] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.[3] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file his application for review within one year of the date of that decision.[4] When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[5]

In his December 14, 1999 letter, appellant stated that the arguments which he tried to advance since February 1996 were not merely points previously considered by the Board and were not an attempt to reargue anything. Inasmuch as appellant appears to be referring to the Board's August 17, 1999 order denying reconsideration, his argument does not address the particular issued involved and, therefore, does not constitute a basis for reopening a case.[6] Moreover, as previously noted, the Board's August 17, 1999 order denying appellant's petition for reconsideration cannot be the subject of another request application for reconsideration.

Appellant further asserted that he had inadequate representation of counsel at his February 1996 hearing before an Office representative. This argument, however, does not address the issue involved and, therefore, cannot constitute a basis for reopening the case.[7]

Appellant also contended that the Office hearing representative misinterpreted the medical evidence, but failed to provide any legal argument or medical evidence to support this contention.

Appellant also submitted a January 4, 2000 report in which Dr. Robertson describes findings and diagnoses essentially consistent with the medical reports previously of record. Dr. Robertson, however, fails to provide medical rationale or an opinion on any causal relationship between appellant's condition and factors of appellant's federal employment. In addressing the history of injury, she notes the work injury claims filed by appellant. Dr. Robertson noted that after appellant began to experience left leg pain in November 1993 after long hours of routine work, and developed progressively severe low back pain to the point where he was unable to carry out his usual duties in May 1994. However, she fails to provide

[2] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act: "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.606(b)(2).

[4] 20 C.F.R. § 10.607(a).

[5] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

[6] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[7] *Id.*

any medical rationale for appellant's progressive low back pain or explain a medical cause for his progressive symptoms.

Although Dr. Robertson's report is new evidence, her report does not contain a clear, well-rationalized opinion regarding the cause of appellant's continuing disability. Therefore, it essentially repeats or duplicates evidence already in the case record. The Board has held that the submission of evidence, which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[8]

Thus, appellant has not established that the Office abused its discretion in its decisions by denying his requests for merit review under section 8128(a) of the Act, because he did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office.

The June 29, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
January 18, 2002

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

[8] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).