U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALFREDO A. SORENIA and DEPARTMENT OF THE AIR FORCE, CLARK AIR FORCE BASE, Republic of the Philippines

Docket No. 02-1883; Submitted on the Record;
Issued February 7, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the refusal of the Office of Workers' Compensation Programs 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.

This is appellant's third appeal before the Board. In the first appeal, the Board determined that appellant had received appropriate compensation under the Philippines Special Schedule of Compensation for his injury.[1] The facts and circumstances of the case are delineated in this appeal and are hereby incorporated by reference. In the second appeal, the Board found that appellant was not entitled to further monetary compensation for an attendant's allowance, in excess of the maximum amount of monetary benefits payable under the Philippines Special Schedule of Compensation.[2]

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 May 31, 2002 decision denying appellant's application for reconsideration of the Board's November 17, 1999 denial of a petition for reconsideration of its June 11, 1999 merit decision.[3] Because more than one year

[1] *See* 20 C.F.R. § 25.21(I) (1998); the total aggregate compensation payable in any case, for injury or death or both, shall not exceed $8,000.00.

[2] Docket No. 95-1313 (issued June 11, 1999).

[3] As the Office may not reconsider a Board's decision, the only decision appellant may seek reconsideration of by the Office is its January 14, 1997 decision which was not, technically, adverse to appellant. *See* 20 C.F.R. § 501.6(c). The February 29, 1996 decision which was adverse to appellant was vacated by its January 15, 1997 decision such that it too is not adverse to appellant. *See* 20 C.F.R. § 501.3(a). By the January 14, 1997 decision, appellant was granted $2,796.00 additional compensation; however, he felt that he was entitled to more.

has elapsed since the last merit decision and June 21, 2002, the postmarked date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the January 14, 1997 decision.[4]

The Federal Register dated November 25, 1998 advised that effective January 4, 1999, certain changes to 20 C.F.R. Parts 1 to 399 would be implemented. The revised Office procedures pertaining to the requirements for obtaining a review of a case on its merits under 5 U.S.C. § 8128(a), state as follows:

> "(b) The application for reconsideration, including all supporting documents, must:
>
> (1) Be submitted in writing;
>
> (2) Set forth arguments and contain evidence that either:
>
> (i) Shows that [the Office] erroneously applied or interpreted a specific point of law;
>
> (ii) Advances a relevant legal argument not previously considered by [the Office]; or
>
> (iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office]."[5]

To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[6] The Board has found that the imposition of the one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under section 8128(a) of the Federal Employees' Compensation Act.[7] When a claimant fails to meet one of the above-mentioned standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[8]

In support of his March 14, 2000 reconsideration request and multiple follow-up letters, appellant submitted numerous copies of medical bills and argued that he was entitled to an

[4] However, the Board previously reviewed and affirmed this decision on June 11, 1999.

[5] 20 C.F.R. § 10.606(b)(1), (2).

[6] 20 C.F.R. § 10.607(a).

[7] *Diane Matchem*, 48 ECAB 532 (1997); *Jeanette Butler*, 47 ECAB 128 (1995); *Mohamed Yunis*, 46 ECAB 827 (1995); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[8] 20 C.F.R. § 10.608(b); *see Mohamed Yunis, supra* note 5; *Elizabeth Pinero*, 46 ECAB 123 (1994); *Joseph W. Baxter*, 36 ECAB 228 (1984).

attendant's allowance despite the $8,000.00 cap on compensation payments as directed in the Philippines Special Schedule of Compensation.[9]

As appellant submitted new medical bills and old argument, the Office conducted a limited review of the evidence and found and the Board now concurs, that he failed to show that the Office erroneously applied or interpreted a specific point of law; he failed to advance a relevant legal argument not previously considered by the Office; and he failed to submit evidence which constituted relevant and pertinent new evidence not previously considered by Office. Therefore, the Office properly denied reopening of appellant's case for a further review on its merits in accordance with 20 C.F.R. § 10.608(b).

In the present case, appellant has not established that the Office abused its discretion by denying his request for a review of its January 14, 1997 decision on its merits.

Accordingly, the decision of the Office of Workers' Compensation Programs dated May 31, 2002 is hereby affirmed.

Dated, Washington, DC
February 7, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[9] This was appellant's allegation adjudicated by the Board in its June 11, 1999 decision.