U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIA ELFA E. MORTOLA and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, San Francisco, Calif.

Docket No. 97-847; Submitted on the Record;
Issued December 18, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant's claim for continuation of pay is barred by the time limitation provision of the Federal Employees' Compensation Act;[1] and (2) whether the Office of Workers' Compensation Programs' refusal to reopen the record pursuant to section 8128(a) of the Act constituted an abuse of discretion.

On April 3, 1995 appellant, then a 52-year-old staff nurse, filed a notice of traumatic injury and claim for shoulder pain and back pain that occurred while assisting a patient. The Office accepted this claim for multiple cervical subluxations.[2] On October 20, 1995 appellant filed a claim for recurrence of disability beginning September 13, 1995. Appellant stopped work on September 14, 1995 and returned to work on November 6, 1995. On December 18, 1995 appellant filed a second claim for recurrence of disability beginning December 4, 1995. By decision dated February 22, 1996, the Office converted appellant's recurrence of disability claim to a traumatic injury claim and accepted it for left shoulder strain and low back strain. In a second decision of the same date, the Office determined that appellant was not entitled to continuation of pay during her absence from work beginning September 14, 1995 on the grounds that the notice of injury was not filed within 30 days, noting that denial of continuation of pay does not affect possible entitlement to other compensation benefits. By decision dated July 26, 1996, the Office denied appellant's request for reconsideration on the grounds that it was not sufficient to warrant review of the prior decision.

The Board has carefully reviewed the entire case record on appeal and finds that appellant's claim for continuation of pay is barred by the time limitation provision of the Act.

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[1] 5 U.S.C. §§ 8101-8193.

[2] Appellant filed two earlier claims for injuries that occurred while in the performance of duty. The Office approved claims on April 17, 1984 for sacroiliac joint strain and on April 11, 1988 for low back strain.

Section 8118 of the Act provides for payment of continuation of pay, not to exceed 45 days, to an employee "who has filed a claim for a period of wage loss due to traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title."[3] Section 8122 provides that written notice of the injury shall be given within 30 days as specified in section 8119 which requires, in pertinent part, that written notice of the injury shall be given to employee's immediate superior within 30 days after the injury.[4]

The Office's implementing regulations state that employees who file a claim for a period of wage loss caused by traumatic injury "shall be entitled under certain circumstances, to have their regular pay continued for a period not to exceed 45 days."[5] The regulations further specify that to receive continuation of pay, an employee must have sustained a traumatic job-related injury and must file a claim for a period of wage loss on an approved form within 30 days of the injury.[6]

In the present case, the Office converted appellant's claim for recurrence of disability to a claim for traumatic injury. However, appellant's claim which was filed October 20, 1995 was dated more than 30 days after her injury which occurred on September 13, 1995. A review of the supervisory section of appellant's claim indicates that it was signed on November 2, 1995 by her supervisor and that appellant received medical care on September 13, 1995 but that said care was not authorized by her supervisor as it occurred "in house." The record does not contain any medical evidence from the health unit of the employing establishment or any medical evidence predating October 26, 1995. Thus, there is no evidence that appellant's supervisor was aware of appellant's injury prior to the date she filed a claim, October 20, 1995, and the recurrence of disability form filed on that date is the only notice on a form approved by the Secretary of Labor of her traumatic injury. Consequently, under the Act and applicable regulations, appellant is not entitled to continuation of pay.

The Board also finds that the Office's refusal to reopen the record pursuant to section 8128(a) of the Act did not constitute an abuse of discretion.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) 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.[7] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value

[3] 5 U.S.C. § 8188(a); *see* 20 C.F.R. § 10.201(a)(3).

[4] 5 U.S.C. § 8122(a)(2); 5 U.S.C. § 8119(a)-(c); *Dodge Osborne*, 44 ECAB 849 (1993).

[5] 20 C.F.R. § 10.200(a).

[6] 20 C.F.R. § 10.200(a)(2)-(3).

[7] 20 C.F.R. § 10.138(b)(2).

and does not constitute a basis for reopening a case.[8] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[9]

By letter received April 16, 1996 and letter dated July 3, 1996, appellant requested reconsideration, asserting that she was never advised to fill out a notice of traumatic injury form (CA-1) when she filed the recurrence of disability claim. Appellant did not submit any evidence. As previously noted, the Office did not penalize appellant for filing an incorrect claim form, rather it converted her recurrence claim to a traumatic injury claim. Nonetheless, that claim was filed more than 30 days after the accepted traumatic injury. As appellant has not submitted any evidence to establish that a written notice of claim was filed within the 30 days after her injury, her request for reconsideration was *prima facie* insufficient to warrant review and the Office properly denied reconsideration.

The decisions of the Office of Workers' Compensation Programs dated July 26 and February 22, 1996 are hereby affirmed.

Dated, Washington, D.C.
December 18, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[8] *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

[9] *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).