U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN CARROLL and U.S. POSTAL SERVICE,
POST OFFICE, Boston, Mass.

Docket No. 96-689; Submitted on the Record;
Issued January 14, 1998

DECISION and ORDER

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

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for a merit review under 5 U.S.C. § 8128 constituted an abuse of discretion.

The Board finds that the refusal by the Office to reopen appellant's case for further review under 5 U.S.C. § 8128 did not constitute an abuse of discretion.

The only decision before the Board on this appeal is the Office's December 13, 1995 decision which denied appellant's request for a review of the merits of his claim under 5 U.S.C. § 8128(a). Since more than one year elapsed between the date of the Office merit decision of January 30, 1990, the Board lacks jurisdiction to review the January 30, 1990 decision.[1]

Appellant, a 27-year-old letter carrier, was involved in a motor vehicle accident at work on March 13, 1989. X-rays on the date of injury obtained at an emergency care treatment facility revealed no fractures. Appellant was off work on March 14, 1989 and returned to work the following day with restrictions against carrying mail for three to four days. Based on a record of emergency care, appellant's claim was accepted on March 30, 1989 for a neck strain.[2] Seven months later, appellant submitted a letter to the Office, by which he related his recently diagnosed bulging disc to the automobile accident on March 13, 1989. He noted that while he was diagnosed with a shoulder or neck injury at the time of his automobile accident, he felt that he had injured his back at the same time. Appellant reported further back problems in June 1989, precipitated by picking something up from the floor at home, with two weeks off from

[1] 20 C.F.R. § 501.3(d) requires that an appeal must be filed within one year from the date of issuance of the final decision of the Office.

[2] Appellant submitted the instructions provided to him from the emergency room, which advised him to use ice and heat treatments, along with Advil, and to be on light duty for three to four days. The instructions advised appellant to obtain an orthopedic evaluation if he did not improve after five days.

work and physical therapy during that time period. He cited another incident at work on October 12, 1989 when he pulled flats from a distribution case and experienced pain. Appellant filed a claim for a recurrence of total disability commencing October 12, 1989. He submitted a form report from Dr. Robert A. Ditullio, a Board-certified surgeon, who supported total disability from work after October 12, 1989, due to L5 radiculitis, with a notation on the front of the form that he was involved in an automobile accident at work on March 13, 1989.

In response to an Office request for additional information, appellant submitted a report by Dr. Ditullio, who related appellant's lumbosacral radiculitis to the motor vehicle accident and reported a recent aggravation of the lumbosacral injury at work on October 12, 1989 from overhead reaching. Appellant also submitted a report from Dr. John Mahoney, a Board-certified neurologist, who negated a causal relationship between appellant's back condition and his automobile accident, and attributed his low back pain instead to probable facet joint instability of the lumbar spine. In response to a further letter from the Office, appellant submitted treatment notes from Dr. Ditullio dated September 1 to 30, 1989, together with reports of diagnostic tests which showed disc bulges at L4-5 and L5-S1, and possible disc bulge at T11-12, with no evidence of a herniated disc. Appellant submitted records from his prior treatment in June 1989 for a thoracic sprain and partial tear of the left rhomboid, as diagnosed by Dr. James K. Lynch, a Board-certified orthopedic surgeon. He submitted records from physical therapy obtained from June 27 to July 6, 1989. Appellant did not submit the actual emergency treatment notes on March 13, 1989 as requested by the Office.

By decision dated January 30, 1990, the Office denied appellant's claim for a recurrence of total disability on and after October 12, 1989 due to his employment injury of March 13, 1989.

In a March 4, 1994 letter, appellant's attorney submitted a list of medical expenses from March 13, 1989, June 22 through July 6, 1989 and from September 1989 through March 1990. Appellant telephoned the Office on September 12, 1995 to request payment of these medical expenses. He subsequently submitted a September 18, 1995 request for reconsideration of the January 30, 1990 decision, with reports from Dr. Ditullio, not previously submitted. In the reports dated December 11, 1989, April 1 and May 20, 1990, Dr. Ditullio provided a history of injury to cervical, dorsal and lumbosacral spines in the motor vehicle accident, along with a torn trapezius muscle on the left. He diagnosed ligamentous tear with L4-5 and L5-S1 disc bulges, concomitant fibrositis and radiculitis, a cervical strain and dorsal strain, noting aggravations in June and October 1989. He noted that he discharged appellant on May 15, 1990 after appellant reported that his symptoms had subsided.

By decision dated December 13, 1995, the Office denied appellant's request for review of the merits of his claim, on the grounds that the evidence was repetitious and insufficient to warrant review of the prior decision.

Section 8128(a) of the Federal Employee's Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.[3] The Office, through its regulations, has imposed a one-year time limitation for a

[3] 5 U.S.C. § 8128; *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

request of review to be made following a merit decision of the Office.[4] The regulations provide that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law, or (2) advancing a point of law or a fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.[5] When application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.[6] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[7] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[8] Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.[9]

Appellant has not submitted any new or relevant evidence to establish his claim that he is entitled to payment of medical benefits for his accepted employment-related condition. While appellant relates his back condition to his automobile accident on March 13, 1989, and requested payment of expenses for treatment of this condition, he submitted no medical evidence of probative value on his request for reconsideration to establish a relationship between his condition on and after October 12, 1989 and his prior automobile accident. In the reports he submitted with his request for reconsideration, Dr. Ditullio restated his opinion on causal relationship based on a history of injuries to his cervical spine, dorsal spine and lumbosacral spine at the time of the automobile accident. However, as stated by the Office in its prior decision, the record does not establish a back injury at the time of the automobile accident. While appellant may be entitled to the payment of medical expenses for the March 13, 1989 treatment following the automobile accident on account of the accepted neck strain, he is not entitled to expenses for treatment for nonaccepted conditions. Neither has he submitted sufficient new evidence to warrant further review of his claim for an employment-related back condition.

[4] 20 C.F.R. § 10.138(b)(2).

[5] 20 C.F.R. § 10.138(b)(1).

[6] *Id.* § 10.138(b)(2).

[7] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

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

[9] *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

The decision of the Office of Workers' Compensation Programs dated December 13, 1995 is hereby affirmed.

Dated, Washington, D.C.
January 14, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member