U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RENEE McWILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Newark, NJ

Docket No. 99-304; Submitted on the Record;
Issued April 11, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, 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 further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board 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 July 22, 1998 decision, denying appellant's request for a review on the merits of the decision of the Office hearing representative dated and finalized April 24, 1997. Because more than one year has elapsed between the issuance of the Office's April 24, 1997 decision and October 14, 1998, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the April 24, 1997 decision.[1]

On November 20, 1993 appellant, then a 30-year-old mailhandler, sustained a back strain when he turned around and bent down to reach for mail. Appellant stopped work for various periods and claimed that he sustained a recurrence of total disability on and after August 30, 1995.[2] By decision dated June 15, 1996, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability on or after August 30, 1995 due to his November 20, 1993 employment injury. By decision dated and finalized April 24, 1997, an Office hearing representative denied modification of the Office's June 15, 1996 decision. By letter dated

[1] *See* 20 C.F.R. § 501.3(d)(2).

[2] At the time of his claimed recurrence of disability, appellant was working in a light-duty position for the employing establishment.

April 9, 1998, appellant requested reconsideration of his claim and, by decision dated July 22, 1998, the Office denied appellant's request for merit review.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[3] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.[4] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.[5] 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.[6]

In support of his April 9, 1998 reconsideration request, appellant submitted a February 1, 1995 report of Dr. Peter N. Carbonara, an attending Board-certified orthopedic surgeon. The submission of this report is not sufficient to require the Office to perform a merit review in that the report had been previously submitted and considered by the Office. 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.[7]

Appellant also submitted a February 9, 1998 report, in which Dr. Carbonara indicated that he had lumbar disc disease, which was confirmed by diagnostic testing obtained in December 1994. He indicated that appellant had low back surgery in March 1996 and stated, "It is my opinion that the surgery was causally related to the initial injury of November 26, 1993." This report, however, contains no medical rationale in support of its opinion on causal relationship.[8] Moreover, it contains no clear opinion on the extent of appellant's disability on and after August 30, 1995. It has no probative value regarding the relevant issue of the present case, *i.e.*, whether appellant submitted adequate rationalized medical evidence to establish an employment-related recurrence of total disability and, therefore, the submission of this report is

[3] 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 his own motion or on application." 5 U.S.C. § 8128(a).

[4] 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

[5] 20 C.F.R. § 10.138(b)(2).

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

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

[8] It has not been accepted that appellant sustained employment-related lumbar disc disease, a condition which was first confirmed more than a year after the occurrence of his November 20, 1993 back strain. Dr. Carbonara did not provide any notable description of appellant's employment injury or otherwise provide a complete and accurate history; he mistakenly reported the injury as occurring on November 26, 1993 rather than November 20, 1993.

not sufficient to require reopening of appellant's claim.[9] The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[10]

In the present case, appellant has not established that the Office abused its discretion in its July 22, 1998 decision, by denying his request for a review on the merits of its April 24, 1997 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, that he advanced a point of law or a fact not previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office.

The decision of the Office of Workers' Compensation Programs dated July 22, 1998 is affirmed.

Dated, Washington, D.C.
April 11, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[9] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

[10] *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).