U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARLENE MARINO and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Andover, MA

Docket No. 99-1567; Submitted on the Record;
Issued November 2, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant sustained a recurrence of disability on or about November 9, 1989, causally related to her August 1, 1985 employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

The Board has given careful consideration to the issues involved appellant's contentions on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office dated October 30, 1998 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.[1]

Appellant subsequently filed a request for reconsideration with the Office on January 4, 1999. By decision dated March 22, 1999, the Office denied appellant's request for reconsideration without addressing the merits of her claim.

The Board further finds that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.[2] Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated

[1] Where appellant claims a recurrence of disability due to an accepted employment injury, she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. 20 C.F.R. § 10.104(b); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[2] 20 C.F.R. § 10.606(b)(2) (1999).

under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[3]

Appellant's January 4, 1999 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2). With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted a December 9, 1998 report from Dr. Clifford M. Levy, a Board-certified orthopedic surgeon, who attributed her current low back condition to her employment injury of August 1985.[4] However, Dr. Levy's December 9, 1998 report is merely a reiteration of an earlier report he provided on June 12, 1998, which the Office previously deemed insufficient.[5] As Dr. Levy's most recent report and the accompanying attachments are repetitive, this evidence does not warrant reopening appellant's claim for a merit review.[6] Consequently, appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2). As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying appellant's January 4, 1999 request for reconsideration.

[3] 20 C.F.R. § 10.608(b) (1999).

[4] In support of his opinion, Dr. Levy referred to earlier findings provided by Drs. Hoke H. Shirley and David J. Nagel, which he attached to his own report. The attached reports of Drs. Shirley and Nagel were already part of the record considered by the Office hearing representative in rendering his October 30, 1998 decision.

[5] In the October 30, 1998 decision, the Office hearing representative concluded that Dr. Levy's June 12, 1998 report lacked probative value inasmuch as the doctor did not provide any medical rationale to support his opinion that appellant's low back condition, for which Dr. Levy performed surgery in May 1997, was causally related to her August 1985 employment injury.

[6] Evidence that is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening the claim. *James A. England*, 47 ECAB 115, 119 (1995); *Saundra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

The decisions of the Office of Workers' Compensation Programs dated March 22, 1999 and October 30, 1998 are hereby affirmed.

Dated, Washington, DC
November 2, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member