U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND M. ROMERO and U.S. POSTAL SERVICE, POST OFFICE, Bell, CA

Docket No. 99-1357; Submitted on the Record;
Issued October 2, 2000

DECISION and ORDER

Before MICHAEL E. GROOM, PRISCILLA ANNE SCHWAB, VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant has established that he sustained a recurrence of disability commencing July 29, 1997, causally related to his September 1, 1990 low back injuries; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a further review of his case on its merits under 5 U.S.C. § 8128(a).

The Board has given careful consideration to the issues involved, the entire case record and appellant's contentions on appeal. The Board finds that the August 26, 1998 decision of the Office hearing representative is in accordance with the law and the facts in this case and hereby adopts the findings and conclusions of the hearing representative.

Appellant disagreed with the August 26, 1998 hearing representative decision and by letter received by the Office on November 2, 1998, he requested reconsideration. In support of his request, appellant submitted an October 13, 1998 report from Dr. Frank Meza, his treating physician,[1] who treated appellant since 1994 for persistent low back pain.[2] Dr. Meza stated that, since that time, appellant had experienced multiple episodes, by history, of low back pain and opined: "I cannot exclude the possibility that the original injury has been the precipitating cause of [appellant's] continuing low back syndrome."[3]

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[1] Dr. Mesa's previous opinion, based upon a March 12, 1997 examination, was reviewed by the hearing representative in the August 26, 1998 decision.

[2] The record supports that appellant returned to full duty on March 31, 1994 and that he experienced no disabling low back problems nor sought any medical treatment for low back problems during the three-year period from 1994 to 1997.

[3] Appellant's original claim had been accepted for lumbosacral strain, aggravation of degenerative lumbar disc disease, bulging discs from L2-S1 and sciatica.

By decision dated January 5, 1999, the Office found that the evidence was repetitious in nature and determined that it was not sufficient to reopen the claim for further merit review.

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.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[4] the Office's regulations provide that a claimant must: (1) submit such application for reconsideration in writing; and (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] When a claimant fails to meet one of the above-mentioned 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] Evidence that repeats or duplicates evidence already in the case record has no new evidentiary value and does not constitute a basis for reopening a case.[7] Evidence that does not address the particular issue involved also constitutes no basis for reopening a case.[8]

In this case, with his request for reconsideration under section 8128(a), appellant submitted a report repetitive of evidence previously submitted and reviewed by the hearing representative, which did not provide a definite opinion on the issue of causal relation with the accepted 1990 injuries. The Board notes that this evidence is not only cumulative but also irrelevant, as it fails to include a definite opinion on causal relation. Consequently, this evidence does not constitute a basis for reopening a claim for further merit review. Therefore, the Office properly denied appellant's application.

Further, appellant has not established that the Office abused its discretion in its January 5, 1999 decision by denying his request for a review on the merits of its August 26, 1998 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, failed to advance a point of law or a fact not previously considered by the Office and failed to submit relevant and pertinent evidence not previously considered by the Office.

As the only limitation on the Office's authority is reasonableness, an abuse of discretion can generally be shown only through proof of manifest error, clearly unreasonable exercise of

[4] 5 U.S.C. §§ 8101-8193.

[5] 20 C.F.R. § 10.606 (b)(1),(2)

[6] *See Mohamed Yunis, supra* note 13; *Elizabeth Pinero*, 46 ECAB 123 (1994); *Joseph W. Baxter*, 36 ECAB 228 (1984).

[7] *Mary G. Allen*, 40 ECAB 190 (1988); *Eugene F. Butler*, 36 ECAB 393 (1984).

[8] *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

judgment, or actions taken which are contrary to both logic and probable deductions from established facts.[9] Appellant has made no such showing here.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated January 5, 1999 and August 26, 1998 are hereby affirmed.

Dated, Washington, DC
October 2, 2000

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

[9] *Daniel J. Perea*, 42 ECAB 214 (1990).