U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEVIN A. LONERGAN and U.S. POSTAL SERVICE,
POST OFFICE, Manchester, NH

Docket No. 99-1881; Submitted on the Record;
Issued September 19, 2000

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

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 has duly reviewed the case record in the present appeal and 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 May 7, 1998 decision denying appellant's application for a review on the merits of its February 19, 1997 decision.[1] Because more than one year has elapsed between the issuance of the Office's February 19, 1997 merit decision and May 3, 1999, the date appellant filed his appeal with the Board, the Board does not have jurisdiction to review the February 16, 1996 decision and will review the May 7, 1998 decision.[2]

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

[1] By decision dated February 19, 1997, the Office denied modification of its February 16, 1996 decision denying appellant's claim for an emotional condition on or after February 14, 1994, causally related to compensable factors of his employment.

[2] *See* 20 C.F.R. § 501.3(d)(2).

[3] 5 U.S.C. §§ 8101-8193.

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

decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.[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]

By letter dated February 4, 1998, appellant requested reconsideration of the February 19, 1997 decision. In support of the request appellant submitted three medical reports and an affidavit from his disability retirement application. None of this medical evidence addressed whether compensable employment factors occurred as alleged. Therefore, none of this evidence is relevant to the issue at hand. Appellant also argued that the employing establishment erred or acted abusively in administrative or personnel matters because it changed his work assignment location several times during the five-year period from 1990 to 1995, when one of his physicians had stated in 1982 that "any major change in [appellant's] work might cause a deterioration in his condition." In this case such administrative error or abuse during the 1990 to 1995 time period has not been demonstrated as a medical report from 1982 with a statement couched in speculative terms, is not relevant to administrative actions taken eight years later and, therefore, does not establish factual administrative error or abuse. As evidence that does not address the particular issue involved is irrelevant, it constitutes no basis for reopening a case.

Consequently, appellant has not presented relevant and pertinent evidence not previously considered by the Office.

In the present case, appellant has not established that the Office abused its discretion in its May 7, 1998 decision by denying his request for a review on the merits of its February 19, 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, failed to advanced a point of law or a fact not previously considered by the Office or failed to submitted 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 only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.[9] Appellant has made no such showing here.

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[5] 20 C.F.R. § 10.138(b)(2).

[6] *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).

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

Consequently, the decision of the Office of Workers' Compensation Programs dated May 7, 1998 is hereby affirmed.

Dated, Washington, DC
September 19, 2000

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member