U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGINIA K. YOUNG and DEPARTMENT OF THE NAVY, FLEET & INDUSTRIAL SUPPLY CENTER, Pearl Harbor, HI

Docket No. 99-2153; Submitted on the Record;
Issued September 22, 2000

DECISION and ORDER

Before DAVID S. GERSON, 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 her 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 her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

As more than one year has elapsed since the date of the Office's April 21, 1998 nonmerit decision and its March 9, 1998 merit decision and the date of appellant's appeal to the Board on June 15, 1999, the Board lacks jurisdiction to review those decisions.[1] The only decision before the Board is the March 11, 1999, nonmerit decision of the Office declining to reopen appellant's claim for consideration of the merits.

On November 6, 1997 appellant, then a 51-year-old supply technician, filed a notice of traumatic injury (Form CA-1) alleging that she sustained "excruciating pain (right leg) and knee" "pain (left leg) knee and shoulders" on October 7, 1997 while in the performance of duty.

In a decision dated March 9, 1998, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that the incident occurred in the performance of duty. By letter received April 13, 1998, appellant requested reconsideration and submitted a narrative statement describing the alleged incident. By nonmerit decision dated April 21, 1998, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification of the prior decision. Appellant then requested reconsideration on February 25, 1999, which the Office in a nonmerit decision dated March 11, 1999, denied.

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[1] 20 C.F.R. § 501.3(d).

To require the Office to reopen a case for merit review, section 10.606 of the code of Federal Regulations provides that a claimant may obtain a review of the merits of the claim by setting forth arguments or evidence that: "(i) Shows that OWCP 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."[2] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.[3] When a claimant fails to meet one of the above-mentioned standards, will deny the application for reconsideration without reopening the case for a review of the merits.[4]

By letter dated February 25, 1999, appellant requested reconsideration of the Office's March 9, 1998 decision denying her claim. In support of the request, appellant submitted a four page letter reiterating arguments previously made and considered by the Office. Also submitted was a March 20, 1998 medical report from Dr. Jeffery J. K. Lee, which essentially repeated reports that the Office had previously reviewed and considered. Dr. Lee noted appellant's history of injury on October 7, 1997 and found that she had "patellofemoral arthralgia and malalignment." However, he failed to establish a causal relationship between appellant's condition and her alleged work-related incident. The Office found and the Board now confirms that this March 20, 1998 letter is cumulative and substantially similar to material previously of record, which had already been considered by the Office. The Board has found that the submission of evidence, which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[5] Consequently, appellant has not presented relevant and pertinent new evidence not previously considered by the Office, sufficient to require that the Office reopen her case for a reconsideration of its merits.

In the present case, appellant has not established that the Office abused its discretion in its March 11, 1999 decision, by denying her request for a review on the merits of its March 9, 1998 decision under section 8128(a) of the Act, because she 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 known facts.[6]

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[2] 20 C.F.R. §§ 10.606(b)(2).

[3] 20 C.F.R. § 10.607(a).

[4] 20 C.F.R. § 10.608(b).

[5] *Jerome Ginsberg*, 32 ECAB 31 (1980).

[6] *Rebel L. Cantrell*, 44 ECAB 660 (1993); *Billy G. Reeder*, 44 ECAB 578 (1993); *Patsy R. Tatum*, 44 ECAB 490 (1993); *Wilson L. Clow*, 44 ECAB 157 (1992); *Daniel J. Perea*, 42 ECAB 214 (1990).

Appellant has made no such showing here.

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 11, 1999 is affirmed.[7]

Dated, Washington, DC
September 22, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

[7] The Board notes that, subsequent to the Office's March 11, 1999 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 37 n.2 (1952).