U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARON LOSEE and U.S. POSTAL SERVICE,
POST OFFICE, San Jose, CA

Docket No. 99-1960; Submitted on the Record;
Issued January 12, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

On May 5, 1979 appellant, then a 38-year-old letter carrier, was involved in a head-on collision while driving a mail delivery vehicle. She sustained abrasions of the knees, contusion to the left rib cage and chest, and a bimalleolar fracture of the right ankle. Appellant stopped work immediately and was placed on the periodic rolls. She has remained off work following the injury, except for a period of employment in 1983.

On September 8, 1981 the Office paid appellant a schedule award for 22 percent permanent impairment for loss of use of her right leg. The Office later paid appellant an additional schedule award for 15 percent permanent impairment of her right leg on August 27, 1996.[1]

Appellant was subsequently approved to work at a sedentary level after undergoing surgery and receiving treatment for her injuries. However, she refused a sedentary position with the employing establishment on July 28, 1996. She stated that she was unable to accept the position because she could not sit down for more than a few minutes, had severe pain and swelling and, most days, was unable to wear a shoe. The job offer was extended through October 31, 1996, but appellant never responded.

[1] The Office decision on August 27, 1996, in addition to appellant's previous award of 22 percent permanent impairment, established a 37 percent permanent impairment of appellant's right leg. Appellant requested an oral hearing on October 1, 1996, which the Office denied as untimely in a decision dated November 15, 1996.

On October 24, 1996 the Office terminated appellant's compensation, finding that she had refused to accept suitable employment.[2]

On August 25, 1997 appellant, through her attorney, requested reconsideration of the August 27 and October 24, 1996 decisions.[3]

On March 20, 1998 the Office reviewed the merits of appellant's claim and denied modification of the October 24, 1996 decision.

On March 19, 1999 appellant, again through her attorney, requested reconsideration of the March 20, 1998 decision. In support of her request, appellant submitted a medical report dated February 10, 1998 from Dr. James Lamberton, an osteopath, which had been previously reviewed by the Office. Appellant also submitted medical reports dated from March 24 to June 9, 1998 from Dr. Lamberton, which discussed appellant's condition since she underwent foot surgery on March 13, 1998 and hospital records and chart reports pertaining to the March 13, 1998 surgery.

By decision dated March 24, 1999, the Office found that the evidence submitted in support of appellant's request for review was cumulative and insufficient to warrant review of the case on its merits. In a memorandum, the Office stated that none of the medical reports submitted addressed the issue of appellant's work tolerance limitations in effect in October 1986, or her ability to perform the duties of the job offered to her at that time.[4]

The Board finds that the Office acted within its discretion in refusing to reopen appellant's claim for merit review.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.[5] Since appellant filed her appeal on June 21, 1999, the only decision over which the Board has jurisdiction is the March 24, 1999 decision denying her request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[6] the Office's regulations provide that a claimant must:

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[2] Appellant, through her attorney, requested an oral hearing on November 26, 1996, which the Office denied as untimely in a decision dated December 20, 1996.

[3] On March 24, 1998 the Office vacated the August 27, 1996 decision, awarding appellant an additional impairment rating of 15 percent. The Office found that the medical evidence established that appellant suffered 43 percent permanent impairment of the right leg, for an additional 21 percent award, according to the standards in existence in 1988.

[4] The Board notes that the Office, when referring to the date the employing establishment offered appellant the position, mistakenly indicated October 1986, although the record reflects that the general clerk position was offered to appellant in October 1996.

[5] *See* 20 C.F.R. § 501.3(d)(2).

[6] 5 U.S.C. §§ 8101-8193.

(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.[7] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file her application for review within one year of the date of that decision.[8] 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.[9]

In this case, appellant did not show that the Office erroneously applied or interpreted a point of law, nor did she advance a point of law or a fact not previously considered by the Office. Appellant, in support of her request for reconsideration, argued that the medical evidence supported her assertion that she was and remains incapable of engaging in full-time, consistent work due to her physical symptoms, limitations and treatment since the 1979 injury. However, the evidence submitted with appellant's March 19, 1999 request did not discuss her inability to work in October 1996, when the position was offered, or provide justifiable reasons for refusing work. 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]

As appellant's March 19, 1999 reconsideration request did not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office acted within its discretion in denying the request.

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[7] 20 C.F.R. §§ 10.606(b), 10.608.

[8] 20 C.F.R. § 10.607.

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

[10] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decision of the Office of Workers' Compensation Programs dated March 24, 1999 is affirmed.[11]

Dated, Washington, DC
January 12, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

[11] Appellant submitted new evidence on appeal. The Board's review of the Office's decision is limited to the case record upon which the Office based its decision. Therefore, the Board may not consider new evidence submitted on appeal. *See Leon C. Robinson*, 3 ECAB 156, 158 (1950); *Richard R. Reeves*, 6 ECAB 371, 375 (1953).