U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAMUEL AUSTIN and U.S. POSTAL SERVICE,
POST OFFICE, Carol Stream, IL

Docket No. 00-459; Submitted on the Record;
Issued March 27, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) 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; and (2) whether the Office abused its discretion in denying appellant's request for an oral hearing under section 8124 of Federal Employees' Compensation Act.

The Board's jurisdiction to consider and decide appeals from decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.[1] As appellant filed his appeal on October 8, 1999, the only decisions properly before the Board are the October 15, 1998 decision denying appellant's request for merit consideration of his claim and the August 17, 1999 decision denying appellant's request for an oral hearing before an Office hearing representative.

The Board has duly reviewed the case record in the present appeals 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.

The Office accepted appellant's claim for disc herniation, low back strain and lumbar radiculopathy. By decision dated June 11, 1998, the Office found that appellant was not entitled to continuation of pay for his absence from work from September 16, 1997 to January 9, 1998. The Office stated that appellant failed to give written notice of his work-related injury to his immediate superior within 30 days of the date of injury although the Office asked him for this information by letter dated May 7, 1998.

By letter dated July 2, 1998, appellant requested reconsideration of the Office's decision. Appellant submitted a signed copy of Form CA-1 dated January 2, 1998 signed by a witness,

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[1] *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

Edith M. Ellis, on April 8, 1998 who stated that appellant notified her of the injury on September 16, 1997. Ms. Ellis stated that on that date appellant complained to her and the postmaster that he was unable to complete his route due to pain in his legs and back, that he said he would be going to the doctor "right away," and the carrier supervisor was then informed. Appellant also submitted an undated witness statement from Elithas Vaughn (not totally legible), a custodian, who stated that, on September 16, 1997, appellant came in from his route "hardly able to walk" due to back pain and he went to the parking lot next door to get appellant's truck and to bring it to him.

By decision dated October 15, 1998, the Office denied appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of Act,[2] 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.[3] Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.[4] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[5] Evidence that does not address the particular issue involved, in this case whether appellant's supervisor was given notice of his September 16, 1997 employment injury within 30 days of the date of the injury, does not constitute a basis for reopening the case.[6]

The evidence appellant submitted with his request for reconsideration, a copy of Form CA-1 dated January 2, 1998 and Mr. Vaughn's witness statement, was previously submitted and considered by the Office. Appellant has therefore not submitted relevant and pertinent evidence not previously considered by the Office. He has also not shown that the Office erroneously applied or interpreted a point of law and has not advanced a point of law or a fact not previously considered by the Office. Appellant has therefore failed to establish his claim for continuation of pay.

Appellant subsequently requested an oral hearing before an Office hearing representative.

By decision dated August 17, 1999, the Branch of Hearings and Review denied appellant's request, stating that since appellant had previously requested reconsideration, he was not, as a matter of right, entitled to an oral hearing with the Branch of Hearings and Review on the same issue. The Branch stated that, in its discretion, it had carefully considered his request

[2] 5 U.S.C. § 8101 *et seq.*

[3] 20 C.F.R. § 10.138(b)(1) and (2).

[4] 20 C.F.R. § 10.138(b)(2).

[5] *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

[6] *See Bobby W. Anderson*, 41 ECAB 833, 836 (1990).

following reconsideration and determined that his request could equally well be addressed by requesting reconsideration from the district Office and submitting evidence not previously considered which establishes that he is entitled to continuation of pay due to the work-related injury. The Branch stated that, alternatively, appellant could appeal the case to the Board.

Section 20 C.F.R. § 10.616 provides that an appellant injured on or after July 4, 1996 who has received a final adverse decision by the district Office may obtain a hearing by writing to the address specified in the decision. The regulation states in pertinent part that appellant must not have previously submitted a reconsideration request, regardless of whether or not it was granted, on the same decision.

Since in the instant case, appellant previously submitted a reconsideration request, the Branch properly denied appellant's request for an oral hearing.

The decisions of the Office of Workers' Compensation Programs dated August 17, 1999 and October 15, 1998 are hereby affirmed.

Dated, Washington, DC
March 27, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member