U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROZELDA SILVA and DEPARTMENT OF JUSTICE, IMMIGRATION & NATURALIZATION SERVICE, Houston, TX

Docket No. 01-1019; Submitted on the Record;
Issued November 29, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

On October 18, 1996 appellant, then a 25-year-old border patrol agent, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that on October 10, 1996 she sustained severe muscle spasms in her lumbar region, the pelvis area, hips, neck and legs which were caused by performing her job duties in the cold radio room.[1] She stopped work on October 10, 1996.

In a December 17, 1996 decision, the Office denied appellant's claim as the evidence of file failed to establish that she sustained an injury as alleged.

Appellant requested an oral hearing on December 27, 1996, which was held on September 24, 1997.

In a February 12, 1998 decision, the Office hearing representative found that appellant had established the first element of her claim, that the specific event, incident or exposure occurred at the time, place and in the manner alleged. However, he found that the medical evidence did not contain a rationalized opinion on causal relationship and affirmed the prior Office decision.

On February 2, 1999 appellant requested reconsideration and submitted additional evidence with her clam.

In a February 23, 1999 decision, the Office denied appellant's request for modification as the evidence was insufficient to modify the prior decision.

[1] The record reflects that appellant had a previous injury on August 4, 1995 for a fractured pelvis which was accepted.

On February 23, 2000 appellant requested reconsideration and submitted additional evidence. The additional evidence was a May 6, 1997 report from Dr. Sergio Pacheco, a neurological surgeon. This was a duplicate report, which was previously submitted to and reviewed by the Office on June 20, 1997 and February 12, 1999. In her request, appellant stated that her injury was a recurrence of her accepted work injury of August 4, 1995.

In a March 9, 2000 decision, the Office denied merit review of appellant's request for reconsideration and found that the evidence submitted in support of appellant's claim was of a repetitious nature and not sufficient to warrant review of the prior decision.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.[2] As appellant filed her appeal with the Board on March 9, 2001, the Board lacks jurisdiction to review the Office's most recent merit decision dated February 23, 1999. Consequently, the only decision properly before the Board is the Office's March 9, 2000 decision denying appellant's request for reconsideration.

The Board finds that the Office properly denied merit review of appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application. The Secretary in accordance with the facts found on review may --
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> (1) end, decrease, or increase the compensation awarded; or
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> (2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2) (1999), a claimant may obtain review of the merits of the claim by submitting evidence and argument: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) (1999) provides that where the request is timely but fails to meet at least one of the standards described in section 10.606(b)(2) (1999), or where the request is untimely and fails to present any clear evidence of error, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[3]

In her request for reconsideration, appellant did not submit any new evidence, nor did appellant specify any erroneous application of law or advance a point of law or fact not previously considered by the Office. As the issue in this case is medical in nature, the submission of new medical evidence addressing whether employment factors caused or

[2] 20 C.F.R. § 10.607(a) (1999).

[3] 20 C.F.R. § 10.608(b) (1999).

aggravated the claimed condition was necessary to require the Office to reopen the claim for a merit review. However, the only medical report was Dr. Pacheco's May 6, 1997 report. This report was previously of record and considered by the Office in its previous decisions. The Board has held that material which is repetitious or duplicative of that already in the case record is of no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.[4] For these reasons, the Board finds that the Office properly denied appellant's request for reconsideration without conducting a merit review of the claim.

The decision of the Office of Workers' Compensation Programs dated March 9, 2000 is hereby affirmed.

Dated, Washington, DC
November 29, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

[4] *See Eugene G. Butler*, 36 ECAB 393, 398 (1984).