U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNIE L. PRIESTER and U.S. POSTAL SERVICE,
POST OFFICE, Augusta, GA

Docket No. 01-1859; Submitted on the Record;
Issued May 1, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

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

On June 25, 1994 appellant, then a 38-year-old mail processor, filed a claim for a traumatic injury to her back sustained on that date working on a bar code sorting machine.

By decision dated September 27, 1994, the Office found that fact of injury was not established. The Office refused to modify this decision in a decision dated April 3, 1995.

On August 9, 1995 appellant filed a claim for an occupational disease for aggravation of her low back condition over a period of time. She indicated that she first became aware of her condition and its relationship to her employment on June 25, 1994.

On January 2, 1996 the Office advised appellant that it had accepted that she sustained a lumbar strain that had resolved by January 27, 1995. The Office authorized leave buy back for intermittent periods from September 12, 1994 to January 27, 1995. By decision dated September 18, 1998, an Office hearing representative found that there was no medical evidence of employment-related disability after January 27, 1995.

On August 7, 1996 appellant filed a claim for a recurrence of disability beginning July 21, 1996.

By decision dated September 30, 1999, the Office found that the evidence did not support a relationship between appellant's condition on or after July 21, 1996 and her 1994 occupational injury.

By letter dated October 27, 1999, appellant requested a hearing, which was held on March 28, 2000.

By decision dated June 9, 2000, an Office hearing representative found that appellant failed to provide medical evidence that she was disabled since July 1996 due to her accepted condition of lumbar strain.

By letter dated June 23, 2000, appellant requested reconsideration of the Office hearing representative's June 9, 2000 and submitted an April 19, 2000 report from Dr. Franklin M. Epstein and a May 24, 2000 report from Dr. Mark Greenberg. Appellant stated that these reports were sent to the Office hearing representative but were not considered.

By decision dated August 25, 2000, the Office found that the additional evidence was not sufficient to warrant review of its prior decision, as the new medical reports did not contain an opinion that appellant's disability since July 21, 1996 was due to her employment injury.

By letter dated February 25, 2001, appellant requested reconsideration and submitted reports from Dr. Greenberg dated September 5 and 13, 2000.

By decision dated March 27, 2001, the Office found that the additional evidence was not sufficient to warrant review of its prior decisions, as Dr. Greenberg stated that appellant's condition was exacerbated by an injury on July 21, 1996 a date on which no injury occurred.

The only Office decisions before the Board on this appeal are the Office's August 25, 2000 and March 27, 2001 decisions, finding that appellant's applications for review were not sufficient to warrant review of its prior decisions. Since more than one year elapsed between the date of the Office's most recent merit decision on June 9, 2000 and the filing of appellant's appeal on July 6, 2001, the Board lacks jurisdiction to review the merits of appellant's claim.[1]

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 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 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), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one

[1] 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office final decision being appealed.

of these three requirements the Office will deny the application for review without reviewing the merits of the claim. 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.[2] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[3]

Appellant's June 23, 2000 and February 25, 2001 requests for reconsideration were from an Office hearing representative's June 9, 2000 decision, finding that appellant had not established that she sustained a recurrence of disability on July 21, 1996 due to her accepted condition. The four medical reports appellant submitted in support of her two requests for reconsideration do not address this issue and are, therefore, not relevant and not sufficient to require that the Office reopen her case for further review of the merits of her claim.

In an April 19, 2000 report, Dr. Epstein noted that appellant's job "involved bending and lifting frequently," and described some of appellant's treatment and medical testing she underwent. He concluded: "Her exam[ination] is normal and the studies to date are not impressive." Dr. Epstein's report contains only one statement on appellant's condition and disability in 1996: "By 1996 she stopped working because, she alleges, she could [not] tolerate the pain." This statement amounts only to a repetition of appellant's complaint that she hurt too much to work, which without objective findings of disability, does not constitute a medical opinion or a basis for payment of compensation.[4]

Dr. Greenberg's May 24, 2000 report stated that appellant's long-standing underlying congenital degenerative lumbar disc disease "clearly was exacerbated by her working in the local Post Office in 1994." This report, however, does not address whether appellant sustained an employment-related recurrence of disability on July 21, 1996 and is, therefore, not relevant. Dr. Greenberg's September 5, 2000 report states that appellant is "100 [percent] fully disabled for returning to active duty, *i.e.*, physical labor at work as in the previous post office employment." This report does not address the cause of appellant's disability or whether appellant sustained an employment-related recurrence of disability on July 21, 1996 and is, therefore, not relevant. Dr. Greenberg's September 13, 2000 report states: "The L5-S1 disc was preexisting, but exacerbated or brought on by the 21 July 1996 injury." As there was no traumatic injury on July 21, 1996, this report is also not relevant to appellant's claim for a recurrence of disability.

[2] *Eugene F. Butler*, 36 ECAB 393 (1984).

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

[4] *See Paul D. Weiss*, 36 ECAB 720 (1985); *Anna Chrun*, 33 ECAB 829 (1982).

The March 27, 2001 and August 25, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 1, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member