U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARENCE GUIDRY and U.S. POSTAL SERVICE,
POST OFFICE, Houston, TX

Docket No. 02-864; Submitted on the Record;
Issued September 16, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the refusal of the Office of Workers' Compensation Program 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.

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

The only decision before the Board on this appeal is the Office's January 31, 2002 decision denying appellant's application for a review on the merits of its April 4, 2000 hearing representative's decision, which affirmed the termination of appellant's monetary compensation under section 8106(c)(2) of the Federal Employees' Compensation Act, on the basis that he refused an offer of suitable employment.[1] Because more than one year has elapsed between the issuance of the Office's April 4, 2000 merit decision and February 11, 2002, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the hearing representative's April 4, 2000 merit decision affirming the termination of appellant's monetary benefits on the basis that he had refused suitable employment.[2]

Under section 8128(a) of the Act,[3] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her claim by showing that the Office

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[1] By decision dated July 30, 1999, the Office terminated appellant's compensation under 5 U.S.C. § 8106(c)(2) on the basis that appellant had refused suitable employment.

[2] *See* 20 C.F.R. § 501.3(d)(2).

[3] 5 U.S.C. § 8128(a).

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.[4] Section 10.608(a) 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.[5] 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.[6] Evidence that does not address the particular issue involved does not constitute a basis for reopening the case.[7]

On February 12, 1998 appellant, then a 61-year-old motor vehicle operator, developed low back pain and left leg pain when he jarred his back while in the performance of his federal duties. The Office accepted the claim for a lumbar strain. Appellant stopped work on February 12, 1998. He returned to work on February 18, 1998, but stopped work again on February 19, 1998 and filed a recurrence claim. In July 1998, the employing establishment noted that it had received medical documentation indicating the need for a limited-duty job within specified restrictions. According, it started looking for a suitable assignment appellant could perform. Appellant retired from the employing establishment effective September 24, 1998. On January 13, 1999 the employing establishment offered him a limited-duty job within his specified restrictions, which he rejected on January 20, 1999. In a July 30, 1999 decision, the Office terminated appellant's compensation based on his refusal of an offer of suitable employment. The Office indicated that the weight of the medical evidence rested with appellant's attending physician, Dr. Jack Pennington and found that his work release was in accordance with a functional capacity examination performed on July 31, 1998. In a decision dated April 4, 2000, an Office hearing representative affirmed the prior decision of April 4, 2000. The hearing representative found that appellant had not introduced any argument nor submitted medical evidence which established that he was not physically capable of performing the duties of the position offered. In his reconsideration request of April 24, 2000, appellant resubmitted a September 28, 1999 medical report from Dr. Howard Cutler and a February 23, 2000 medical report from Dr. Pennington and contended that the Office hearing representative failed to consider those medical reports.

The Office properly found that appellant's April 24, 2000 letter requesting reconsideration and the evidence submitted therein was insufficient to warrant a merit review of its prior decision of April 4, 2000. The Board notes that although Dr. Cutler's medical report dated September 28, 1999 was not resubmitted in its entirety,[8] both the medical reports appellant submitted were previously before the Office and, as it would be considered duplicative evidence, it would not constitute a basis for reopening appellant's claim for further consideration on its

[4] 20 C.F.R. § 10.606(b)(2) (1999). *See generally* 5 U.S.C. § 8128(a).

[5] 20 C.F.R. § 10.608(a) (1999).

[6] *Howard A. Williams*, 45 ECAB 853 (1994).

[7] *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Edward Mathew Diekemper*, 31 ECAB 224, 225 (1979).

[8] It appears page three from the September 28, 1999 report is missing.

merits. Moreover, despite appellant's contentions to the contrary, the Office noted and the record reflects that both Dr. Cutler's September 28, 1999 report and Dr. Pennington's February 23, 2000 report were specifically addressed and considered in the Office's hearing representative's decision of April 4, 2000.

Accordingly, in the present case, appellant has not established that the Office abused its discretion in its January 31, 2002 decision by denying his request for a review on the merits of its April 4, 2000 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, failed to advance a point of law or a fact not previously considered by the Office or failed to submit 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 established facts.[9] Appellant has made no such showing here.

The decision of the Office of Workers' Compensation Programs dated January 31, 2002 is hereby affirmed.

Dated, Washington, DC
September 16, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[9] *Daniel J. Perea*, 42 ECAB 214 (1990).