United States Department of Labor Employees' Compensation Appeals Board

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P.D., Appellant)	
·)	
and)	Docket No. 12-1073
)	Issued: December 12, 2012
U.S. POSTAL SERVICE, ROCHESTER)	
PROCESSING & DISTRIBUTION CENTER,)	
Rochester, NY, Employer)	
)	
Appearances:		Case Submitted on the Record
Appellant, pro se		
Office of Solicitor, for the Director		

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge

PATRICIA HOWARD FITZGERALD, Judge

On April 10, 2012 appellant filed a timely appeal from the December 16, 2011 decision of the Office of Workers' Compensation Programs (OWCP). The stated issue was whether appellant had submitted new and relevant evidence sufficient to warrant review of its prior decision. OWCP then set forth the three legal standards for obtaining a merit review under section 8128(a) of the Federal Employees' Compensation Act (FECA). It ultimately determined that appellant's reconsideration request failed to meet at least one of those standards. OWCP specifically found that appellant failed to demonstrate that it had erroneously applied or interpreted a point of law; he did not advance a point of law or facts not previously considered; and he did not submit relevant and pertinent evidence not previously considered by OWCP.

At the same time, the decision's cover letter indicated that OWCP had reviewed the merits of his case. In the "Background" portion of the decision, OWCP stated that appellant's appeal request form and reconsideration letter were new "and a merit review was carried out under 5 U.S.C. [§] 8128." The "Basis for Decision" portion of the decision, however, noted similar or repetitious arguments and the lack of any new supporting evidence. It also noted an inconsistent argument. OWCP concluded that the evidence was not sufficient to warrant

¹ 5 U.S.C. § 8128(a).

modification of its prior decision and appeal rights indicated that appellant could request reconsideration.

Section 8124 of FECA provides that OWCP shall determine and make a finding of facts and make an award for or against the payment of compensation.² Implementing regulations provide that OWCP's decision shall contain findings of fact and a statement of reasons.³ Further, OWCP procedures state that the reasoning behind OWCP's decision should be clear enough for the reader to understand the precise defect and the kind of evidence that would overcome it.⁴

The Board finds that OWCP's December 16, 2011 decision fails to explain clearly whether OWCP has, on the one hand, reopened appellant's case and reviewed the merits of the claim, or whether it has, on the other hand, denied a reopening of his case without reviewing the merits of his claim on the grounds that his reconsideration request did not meet at least one of the three standards under section 8128(a). The decision is not clear enough for the reader to understand the nature of the decision.

Accordingly, the Board will set aside OWCP's December 16, 2011 decision and return the case to OWCP for a final decision that contains appropriate findings of fact and a clear statement of reasons. In particular, the decision shall make clear whether OWCP is denying appellant's reconsideration request without reopening his case or whether it is granting his reconsideration request and reviewing the merits of his case.⁵

² 5 U.S.C. § 8124(a); see Hubert Jones, Jr., 57 ECAB 467 (2006); Paul M. Colosi, 56 ECAB 294 (2005).

³ 20 C.F.R. § 10.126; *see M.L.*, Docket No. 09-956 (issued April 15, 2010); *O.R.*, 59 ECAB 432 (2008); *Teresa A. Ripley*, 56 ECAB 528 (2005).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4(e) (March 1997).

⁵ See J.J., Docket No. 11-1958 (issued June 27, 2012) (order remanding case on the grounds that OWCP denied modification of a wage-earning capacity determination while at the same time finding that the additional evidence was repetitive, duplicative, irrelevant and insufficient to establish clear evidence of error, all elements of a nonmerit review).

IT IS HEREBY ORDERED THAT the December 16, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.

Issued: December 12, 2012

Washington, DC

Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge Employees' Compensation Appeals Board