U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM R. COBB and DEPARTMENT OF THE ARMY, ARMY CORPS OF ENGINEERS, Detroit, Mich.

Docket No. 98-173; Submitted on the Record;
Issued April 15, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

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.[1] As appellant filed his request for appeal on September 22, 1997, the only decision before the Board is the June 18, 1997 nonmerit decision denying appellant's application for review. The Board has no jurisdiction to review the most recent merit decision of record, the May 17, 1996 decision of the Office hearing representative.

The Board 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.

Section 8128(a) does not require the Office to review final decisions of the Office awarding or denying compensation. This section vests the Office with the discretionary authority to determine whether it will review a claim following the issuance of a final decision by the Office.[2] Although it is a matter of discretion on the part of the Office of whether to reopen a case for further consideration under 5 U.S.C. § 8128(a),[3] the Office, through regulations, has placed limitations on the exercise of that discretion with respect to a claimant's request for reconsideration. By these regulations, the Office has stated that it will reopen a

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[1] 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[2] *Gregory Griffin*, 41 ECAB 186 (1989).

[3] *See Charles E. White*, 24 ECAB 85 (1972).

claimant's case and review the case on its merits whenever the claimant's application for review meets the specific requirements set forth in sections 10.138(b)(1) and 10.138(b)(2) of Title 20 of the Code of Federal Regulations.

To require the Office to reopen a case for reconsideration, section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides in relevant part that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

> "(i) Showing that the Office erroneously applied or interpreted a point of law; or
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> "(ii) Advancing a point of law or fact not previously considered by the Office; or
>
> "(iii) Submitting relevant and pertinent evidence not previously considered by the Office."[4]

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.[5]

Evidence which does not address the particular issue involved,[6] or evidence which is repetitive or cumulative of that already in the record,[7] does not constitute a basis for reopening a case. However, the Board has held that the requirement for reopening a claim for a merit review does not include the requirement that a claimant must submit all evidence which may be necessary to discharge his or her burden of proof. Instead, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.[8]

In the present case, in support of his March 6, 1997 reconsideration request, appellant submitted copies of medical evidence previously submitted in support of his original claim from Dr. William B. Hampton, an attending Board-certified internist.

On June 18, 1997 the Office properly performed a limited examination of the material presented by appellant to determine the relevancy and probative value of the new evidence, and it found that the evidence submitted was insufficient to support a review of the case on its merits.

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[4] 20 C.F.R. § 10.138(b)(1).

[5] 20 C.F.R. § 10.138(b)(2).

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

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

[8] *See Helen E. Tschantz*, 39 ECAB 1382 (1988).

The Board notes that the medical evidence submitted was previously reviewed by the Office hearing representative in support of appellant's original claim and therefore is repetitious and duplicative, and therefore also provides no basis for reopening appellant's claim for a review on its merits.

As appellant provided insufficient evidence to require the reopening of his claim for further examination on its merits, the Office properly denied merit review.[9]

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 18, 1997 is hereby affirmed.

Dated, Washington, D.C.
April 15, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[9] The Board notes that appellant submitted additional evidence subsequent to the Office's June 18, 1997 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).