U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA L. THOMAS and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Detroit, MI

Docket No. 99-1348; Submitted on the Record;
Issued August 10, 2000

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her 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 Office did not abuse its discretion in denying appellant's request for review.

The only decision before the Board in this appeal is the Office's decision dated September 30, 1998 denying appellant's application for review. As more than one year elapsed between the date of the Office's most recent merit decision, dated and finalized on October 29, 1997, and the filing of appellant's appeal, postmarked March 12, 1999, the Board lacks jurisdiction to review the merits of appellant's claim.[1]

To require the Office to reopen a case for merit review under section 10.138(b)(1)[2] of the implementing regulations provide that a claimant must:

"(1) Show that the Office erroneously applied or interpreted a point of law;

"(2) Advance a point of law or a fact not previously considered by the Office; or

"(3) Submit relevant and pertinent evidence not previously considered by the Office.[3]

---

[1] 20 C.F.R. § 501.3(d)(2).

[2] Under section 8128 of the Federal Employees' Compensation Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[4] To be entitled to merit review of an Office decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.[5]

The facts in this case indicate that on February 4, 1995 appellant, then a 50-year-old taxpayer service representative, filed a written notice of occupational disease alleging that her work duties over the years caused her to develop carpal tunnel syndrome. On August 2, 1995 the Office accepted appellant's claim for bilateral carpal tunnel syndrome and authorized bilateral carpal tunnel release surgery. Appellant was off work from January 26 until July 17, 1995 when she returned to work three days a week with physical restrictions. Appellant returned to full-time modified duty on August 26, 1996, but on September 7, 1996 she reduced her work schedule to three days a week. On the advice of the Office, on November 5, 1996, appellant filed a Form CA-2a, claim for a recurrence of disability.

In a decision dated May 15, 1997, the Office denied appellant's claim on the grounds that the medical evidence failed to demonstrate that the claimed recurrence of disability beginning August 29, 1996 is causally related to the accepted employment condition.

On June 7, 1997 appellant requested reconsideration and submitted additional medical and factual evidence in support of her claim. In a decision dated July 19, 1997, the Office found the evidence submitted with appellant's request for reconsideration to be insufficient to warrant modification of the prior decision.

By letter received October 25, 1997, appellant requested reconsideration and submitted additional medical evidence in support of her request. In a decision dated October 29, 1997, the Office found the newly submitted medical evidence insufficient to warrant modification of the prior decision.

By letter received July 16, 1998, appellant again requested reconsideration of the Office's prior decision and submitted additional medical evidence in support of her request. In a decision dated September 30, 1998, the Office denied appellant's request on the grounds that she neither raised substantive legal questions nor included new and relevant evidence. The instant appeal follows.

The Board has held that, in the exercise of its discretionary authority, the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken, which are contrary

---

[3] 20 C.F.R. § 10.138(b)(1) and (2).

[4] *Eugene L. Turchin*, 48 ECAB 391 (1997); *Linda I. Sprague*, 48 ECAB 386 (1997).

[5] 20 C.F.R. § 10.138(b)(2).

to both logic and probable deduction from established facts.[6] In her request for reconsideration, appellant stated that she felt she should be compensated for her disability resulting from her employment-related carpal tunnel syndrome and asked that the Office consider the newly submitted evidence from her treating physicians, Drs. Edward F. Burke and Mark A. Olson. The majority of the evidence submitted, however, was previously submitted to the record and, therefore, is duplicative. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.[7] New to the record, however, are two reports from Dr. Burke and two from Dr. Olson. In a report dated April 1, 1998, Dr. Burke, an osteopath and Board-certified family practitioner, noted that appellant had bilateral carpal tunnel syndrome of an advanced degree and had undergone carpal tunnel release surgery on her left hand. While Dr. Burke clearly opined that appellant's carpal tunnel syndrome is employment related, he did not address whether appellant's carpal tunnel syndrome worsened on or after August 29, 1996 such that she could no longer perform her modified job five days a week. In a report dated May 15, 1998, Dr. Burke stated that appellant's carpal tunnel syndrome was in no way related to her diagnosed hypertension, but did not otherwise address appellant's condition. As he did not address, in either report, the issue on which reconsideration was requested, his reports are not sufficient to require the Office to reopen appellant's case for merit review.[8] In his reports dated March 17 and April 30, 1998, Dr. Olson, a Board-certified neurologist, discussed the results of pre- and post- surgical electromyographic studies, performed on December 8, 1995, November 22, 1996, July 22, 1997 and April 30, 1998, but did not discuss appellant's ability to perform her modified job duties on or after August 29, 1996. Therefore, his reports are also insufficient to require the Office to reopen appellant's claim for a review of the merits.[9] As appellant failed to raise substantive legal questions or to submit new relevant and pertinent evidence not previously reviewed by the Office, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.[10]

[6] *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

[7] *See James A. England*, 47 ECAB 115 (1995)*; Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

[8] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case. *Barbara A. Weber*, 47 ECAB 163 (1995).

[9] *Id.*

[10] The Board notes that, together with her appeal, appellant submitted additional medical evidence in support of her claim. The Board cannot consider this evidence, however, as it is precluded from reviewing any evidence, which was not before the Office at the time of the final decision on appeal; *see* 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs September 30, 1998 is hereby affirmed.

Dated, Washington, D.C.
August 10, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member