U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARGARET FLANAGAN and DEPARTMENT OF HEALTH & HUMAN SERVICES, NATIONAL INSTITUTE OF HEALTH, Bethesda, MD

*Docket No. 00-345; Submitted on the Record;*
*Issued December 13, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
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 finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The Office accepted that appellant, then a 40-year-old nurse consultant, sustained cervical and lumbar strains on August 24, 1994, when she was struck in the left buttocks with a doorknob at work.[1] Appellant did not stop working as a result of this injury.

Appellant filed a recurrence of disability claim on August 29, 1996, alleging that her original injury of August 24, 1994 caused her disability on August 7, 1996. By decision dated February 12, 1997, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that the claimed recurrence of disability was causally related to the August 24, 1994 injury.

Following a review of the written record at appellant's request, an Office hearing representative vacated the February 12, 1997 decision in a decision dated July 10, 1997 and remanded the case for further development of the medical evidence and referral of appellant to a specialist for a second opinion.

[1] The record contains several other claims filed by appellant alleging traumatic injury to her low back and lower extremity. The Office accepted that appellant sustained work-related injuries on the following dates: January 27, 1980; February 4, 1982; January 31, 1984; March 31, 1987; July 26 1988 and March 19, 1993.

Upon further development of the case, the Office denied appellant's recurrence of disability claim of August 7, 1996 in a decision dated May 14, 1998, on the basis that there were no residuals due to appellant's accepted injuries.

Appellant disagreed with the May 14, 1998 decision and requested reconsideration in a letter dated May 7, 1999. By decision dated June 16, 1999, the Office denied appellant's request for a merit review.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.[2] Since appellant filed her appeal on September 14 1999, the only decision over which the Board has jurisdiction on this appeal is the June 16 1999 decision, denying her request for reconsideration.

The Board finds that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

Section 10.606(b)(2) of Title of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.[3] Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[4]

In the present case, appellant did not show that the Office erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by the Office. In her May 7, 1999 reconsideration request, appellant argued that the second opinion examination conducted by Dr. Denis Harris, a Board-certified orthopedic surgeon, on March 31, 1998 was inadequate. She further discussed medical evidence, which she argued contradicted Dr. Harris' March 31, 1998 findings that appellant had no condition or disability on August 7, 1996 due to her accepted injuries. Appellant also argued that she had been examined by physicians since the May 14, 1998 decision, who indicated that she could have another herniated disc, which was not apparent in an earlier magnetic resonance imaging (MRI) scan. Appellant however, failed to submit any evidence in support of arguments made in her May 7, 1999 reconsideration request.

Furthermore, the new evidence appellant submitted with her May 7, 1999 request for reconsideration is not sufficient to require that the Office reopen her case for further review of the merits of her claim under 5 U.S.C. § 8128(a). Appellant submitted progress notes from January 28, 1980 to July 22, 1993 and from November 20, 1996 to September 4, 1998, along

[2] *See* 20 C.F.R. § 501.3(d)(2).

[3] 20 C.F.R. §§ 10.606(b).

[4] 20 C.F.R. § 10.608.

with an MRI report of appellant's lumbar spine performed May 1, 1998, however, such evidence is of limited probative value on the relevant issue of the present case. Neither the progress notes nor the MRI report support that appellant sustained a recurrence of disability on or after August 7, 1996 due to her August 24, 1994 employment injury.[5] Therefore, the newly submitted evidence does not relate to the main issue of the present case, *i.e.*, whether appellant submitted sufficient medical evidence to establish an employment-related recurrence of disability on August 7, 1996. The Board has held that the submission of evidence, which does not address the particular issue involved does not constitute a basis for reopening a case.[6]

As appellant's May 7, 1999 reconsideration request did not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying the request.

The decision of the Office of Workers' Compensation Programs dated June 16, 1999 is affirmed.

Dated, Washington, DC
December 13, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

[5] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[6] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).