U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHEN C. SPARKMAN and DEPARTMENT OF THE ARMY, DIRECTORATE OF PUBLIC WORKS, Fort Sill, OK

Docket No. 99-2335; Submitted on the Record;
Issued December 18, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

On March 30, 1993 appellant, then a 37-year-old plumber, injured his back while removing a manhole cover in the performance of duty. The Office initially accepted appellant's claim for lumbosacral strain and later expanded the claim to include degenerative disc disease with nerve root compression. Appellant returned to work in a light-duty capacity on July 1, 1993, with restrictions of no lifting over 20 pounds. On August 16, 1993 appellant ceased working ostensibly because of his accepted back condition. The employing establishment terminated appellant on September 30, 1993 due to a reduction-in-force.

More than two years after his September 1993 separation from employment, appellant filed a claim for compensation (Form CA-7) for temporary total disability during the period August 16, 1993 to July 20, 1995. In a decision dated June 20, 1996, the Office denied the claim on the basis that the medical evidence of record failed to establish that appellant was totally disabled on or after August 16, 1993 as a result of his work-related injury.[1] The Office further found had it not been for appellant's September 30, 1993 termination due to a reduction-in-force, he would have continued to perform his limited-duty assignment with the employing establishment. An Office hearing representative subsequently affirmed the denial of compensation in a decision dated and finalized on April 8, 1997.

Appellant requested reconsideration on June 6, 1997 and submitted additional medical evidence. The Office denied appellant's request for merit review by decision dated October 24, 1997.

[1] The Office accorded determinative weight to the May 29, 1996 report of Dr. Joseph D. McGovern, a Board-certified orthopedic surgeon and an Office referral physician.

On November 12, 1997 appellant filed an appeal with the Board. However, he subsequently requested that his appeal be dismissed so that he could submit additional evidence to the Office for reconsideration. Accordingly, the Board dismissed the appeal on December 30, 1998.[2]

Appellant subsequently filed a request for reconsideration dated February 3, 1999. The request was accompanied by a June 1, 1998 report from Dr. Cecil J. Hash, a Board-certified neurosurgeon. The Office denied appellant's request for merit review in a decision dated March 11, 1999.

In a letter dated June 6, 1999, appellant again requested reconsideration. By decision dated July 1, 1999, the Office denied appellant's request for reconsideration without reaching the merits of his claim.

The Board finds the Office properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.[3]

Section 10.606(b)(2) of Title 20 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.[4] 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.[5]

Appellant's February 3 and June 6, 1999 requests for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).[6]

---

[2] Docket No. 98-327 (issued December 30, 1998).

[3] As more than one year has elapsed from the issuance of the Office's April 8, 1997 decision to the date the current appeal was docketed on August 27, 1999, the Board concludes that it only has jurisdiction to review the March 11 and July 1, 1999 decisions. *See* 20 C.F.R. § 501.3(d)(2).

[4] 20 C.F.R. § 10.606(b)(2) (1999).

[5] 20 C.F.R. § 10.608(b) (1999).

[6] The Board has held that, when a claimant stops work for reasons unrelated to his accepted employment injury, he has no disability within the meaning of the Federal Employees' Compensation Act. *John W. Normand*, 39 ECAB 1378 (1988). Additionally, the Office's procedures provide that a recurrence of disability does not include a work stoppage caused by a reduction-in-force where employees performing full duty as well as those performing light duty are affected. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2)(c) (May 1997).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, while appellant submitted Dr. Hash's June 1, 1998 report along with his February 3, 1999 request for reconsideration, the doctor's report is not relevant to the issue on reconsideration. Dr. Hash does not specifically address whether appellant is physically capable of performing the light-duty position he held prior to his termination in September 1993. Although Dr. Hash stated that appellant "has remained unable to work since 1993," it is not clear whether the doctor's statement is a medical assessment regarding appellant's physical ability to perform work or merely a statement regarding appellant's unsuccessful attempts to obtain suitable employment since his termination in 1993. Inasmuch as Dr. Hash's June 1, 1998 report does not clearly address the relevant issue of whether appellant has any continuing disability causally related to his March 30, 1993 employment injury, it is insufficient to warrant reopening the claim.[7] Additionally, the Board notes that appellant did not submit any relevant and pertinent new evidence with his most recent request for reconsideration. Consequently, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying appellant's February 3 and June 6, 1999 requests for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated July 1 and March 11, 1999 are hereby affirmed.

Dated, Washington, DC
December 18, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

[7] Evidence that does not address the particular issue involved does not constitute a basis for reopening the claim. *Richard L. Ballard*, 44 ECAB 146, 150 (1992).