U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIA L. CUNNINGHAM and U.S. POSTAL SERVICE, POST OFFICE, Gary, IN

Docket No. 00-1517; Submitted on the Record;
Issued April 26, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's requests for reconsideration.

The Board has duly reviewed the case record and finds that the Office, in its decisions dated September 17 and December 20, 1999, acted within its discretion in refusing to reopen appellant's case for further consideration of the merits of her claim.

This is the third time this case has been on appeal. Previously, the Board found that appellant had not met her burden of proof in establishing that a recurrence of disability on or after December 29, 1989 was causally related to her accepted employment injuries of August 22 and September 18, 1987 and June 28, 1988.[1]

By letter dated June 17, 1999, appellant requested reconsideration and submitted a January 15, 1999 report from Dr. Robert S. Martino, a Board-certified orthopedic specialist, who reported a history of appellant's injuries and treatments since 1985. Dr. Martino indicated that appellant was released to return to limited duty on May 15, 1989. He next saw appellant on January 5, 1990. Dr. Martino indicated that appellant had a lumbosacral strain. He related that appellant was helping her brother get into a car and that she had aggravated her preexisting back condition. Dr. Martino stated that appellant "had a preexisting condition at that time with the chronic condition. She was put on permanent light duty. All her tests, the electromyogram shows a dis[c] and nerve root irritation and this helping her brother in the car just aggravated what she had had."

[1] Docket No. 96-1721 (issued December 16, 1998). A complete procedural history is set forth in the Board's December 16, 1998 decision, which incorporates the Board's earlier decision of January 17, 1995 and is hereby incorporated by reference.

By decision dated September 17, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support was not sufficient to warrant modification of the prior decision.

By letter dated December 7, 1999, appellant again requested reconsideration. Appellant argued that the Office failed to consider all prior traumatic injuries, which she had suffered at work, which she claimed left her totally disabled with permanent residuals in various parts of her body. Appellant submitted an October 19, 1999 report from Dr. John A. Hoehn, an osteopath, who noted appellant's treatment regimen for her low back pain, which is secondary to her degenerative disc disease. He noted that appellant was treated conservatively with exercises as well as medication and trigger point injections, with an occasional use of anti-inflammatory medication. He added that she responded satisfactorily to this regimen. Dr. Hoehn stated that appellant's treatment was related to the work injuries of 1987 and 1988.

By decision dated December 20, 1999, the Office denied appellant's request for reconsideration on the grounds that appellant's December 7, 1999 letter neither raised new, substantive legal questions nor provided relevant medical evidence.

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.[2] As appellant filed her appeal with the Board on March 10, 2000 the only decisions properly before the Board are the Office's September 17 and December 20, 1999, decisions denying appellant's requests for reconsideration. The Board has no jurisdiction to consider the last merit decision of record, the Board's December 16, 1998 decision affirming the Office's denial of recurrence of disability.[3]

Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[4] Section 10.607 provides that, when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.[5] If a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, the Office has the discretion to refuse to reopen a case for further consideration of the merits pursuant to section 8128.[6]

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

[3] *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

[4] 20 C.F.R. § 10.606.

[5] 20 C.F.R. § 10.607.

[6] *John E. Watson*, 44 ECAB 612, 614 (1993).

In this case, appellant's claim for wage-loss compensation since December 29, 1989 was denied on the grounds that any disability for work was not causally related to her June 28, 1988 injury. Additionally, appellant had not provided evidence supporting either a spontaneous worsening of her accepted conditions or a change in the nature and extent of her restricted duty job requirements. Although in her reconsideration requests, appellant attempts to offer relevant medical evidence which the Office did not previously consider, such evidence, although new, is insufficient to require reopening of appellant's case for further review of the merits of her claim pursuant to section 8128 as it is either irrelevant, immaterial or duplicative of evidence already within the case record.

In support of reconsideration, appellant submitted a January 15, 1999 report from Dr. Martino and an October 19, 1999 report from Dr. Hoehn. Although both physicians discussed appellant's treatment regimen, neither addressed the relevant issue *i.e.,* whether the disabling condition for which compensation is sought is causally related to the accepted employment injury and prevented appellant from performing her limited-duty position. Dr. Martino did not address whether appellant's accepted condition had deteriorated or whether her limited-duty job requirements had changed. He merely stated that appellant's back condition was aggravated or worsened as a result of helping her brother into a car.

Likewise, Dr. Hoehn did not address or discuss whether appellant was temporarily totally disabled due to her accepted conditions; he merely noted that appellant seemed to be responding satisfactorily to a conservative treatment regimen. The Board has held that the submission of evidence that does not address the particular issue involved is of little probative value. Because these reports are irrelevant, neither is sufficient to require the Office to reopen appellant's claim for merit review.[7]

In her letters requesting reconsideration, appellant did not submit any relevant and pertinent evidence not previously considered by the Office and did not argue that the Office erroneously applied or interpreted a point of law. Nor did she advance a point of law not previously considered by the Office. Appellant merely stated her opinion that the Office had failed to consider all prior traumatic injuries she had suffered at work. However, appellant is not a physician and lay persons are not competent to render a medical opinion.[8]

[7] *John E. Wastson, supra* note 6.

[8] *See James A. Long,* 40 ECAB 538, 542 (1989).

The December 20 and September 17, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 26, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member