U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TONY GRIFFIN and U.S. POSTAL SERVICE,
POST OFFICE, Bradenton, FL

Docket No. 99-1992; Submitted on the Record;
Issued April 10, 2001

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further reconsideration of the merits constituted an abuse of discretion.

On May 22, 1987 appellant, then a 25-year-old letter carrier, sustained a right shoulder and cervical injury in the performance of his federal duties. The claim was accepted for subluxation, right rotator cuff tear, right shoulder strain and cervical herniated disc. Appellant did not miss time from work due to this injury until 1990 when he had surgery to repair his rotator cuff. He returned to work on October 8, 1990 and accepted a permanent limited-duty position on October 15, 1992.

Appellant later filed several claims for lost wages due to his employment injury and was paid appropriate compensation for various periods of disability. He again stopped work in November 1995 and received compensation for lost wages from December 7, 1995 through July 26, 1996.

By letter dated August 22, 1996, the employing establishment offered appellant a modified city carrier position based on restrictions outlined by Dr. Antonio Castellvi, a Board-certified orthopedic surgeon and appellant's attending physician. On August 22, 1996 appellant refused the job offer.

By letter dated September 18, 1996, the Office informed appellant that the proposed position of modified city carrier remained available and was suitable. The Office advised him that he had 30 days within which to accept the position or provide an explanation for refusing. The Office also advised appellant on the consequences of refusing the suitable job offer.

By letter dated October 7, 1996, appellant indicated that he refused the job offer because Dr. Castellvi had not reviewed the job offer and the job description did not outline specific duties

or the work location. By letter dated November 26, 1996, the Office advised appellant that his reasons for refusing the position were unacceptable and that he had 15 days to accept the position. By letter dated December 9, 1996, appellant advised that he would accept the offer.

In a memorandum to the Office dated January 30, 1997, the employing establishment stated that it had forwarded appellant two copies of the written job offer and requested his signature and return to work, but appellant had not responded. In a February 4, 1997 memorandum, the employing establishment advised that appellant refused a certified letter containing the job offer.

By decision dated February 13, 1997, the Office terminated appellant's compensation on the grounds that appellant refused to accept a suitable job offer.

By letter dated February 24, 1997, appellant requested an oral hearing, which was held October 22, 1997.[1] By decision dated January 5, 1998, the Office hearing representative affirmed the February 13, 1997 decision terminating appellant's compensation.

In a letter dated January 4, 1999, appellant requested reconsideration of the prior decision. By decision dated February 23, 1999, the Office denied appellant's request for review on the grounds that the evidence submitted was insufficient to warrant modification of its prior decision.

The Board finds that the Office acted within its discretion in declining to reopen appellant's case for further consideration of the merits.

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 his appeal with the Board on May 24, 1999, the only decision properly before the Board is the February 23, 1999 decision denying appellant's request for reconsideration. The February 13, 1997 decision terminating appellant's compensation is not before the Board. Thus, the only relevant issue on appeal is whether appellant's January 4, 1999 request for reconsideration of the January 5, 1998 decision was sufficient to warrant reopening of appellant's case.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[3] the Office's regulations provide in section 10.606(b)(2) of Title 20 of the Code of Federal Regulations 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

[1] The Board notes that appellant returned to his rehabilitation position with the employing establishment on February 24, 1997 and worked for one hour until he refused to sign the job offer and was told to clock out and go home.

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

[3] 5 U.S.C. §§ 8101-8193.

(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]

The Board finds that the evidence submitted on reconsideration was insufficient to warrant reopening of appellant's case. With the January 4, 1999 request for reconsideration, appellant submitted a copy of the letter to Dr. Hector Fosser, his psychiatrist, dated March 30, 1997, a copy of the January 23, 1997 letter from the employing establishment and a copy of the August 22, 1996 job offer. Appellant's submission duplicates evidence already of record and previously considered by the Office. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record, does not constitute a basis for reopening a case.[6]

Appellant's counsel argued that appellant advised the Office that he would accept the job offer, but he did not receive the certified letter containing the written offer until February 14, 1997, which appellant signed and returned on February 19, 1997. Appellant's counsel also argued that appellant's physician had not reviewed the job offer and that, therefore, appellant had a plausible reason for refusing the position in August 1996. Counsel further argued that appellant did report to work on February 24, 1997 and that he left work that day only because management ordered him off-duty. Each of these arguments presented on reconsideration had been discussed during the October 22, 1997 hearing and adequately considered by the Office hearing representative in the January 2, 1998 decision. Therefore, these arguments are repetitious and insufficient to warrant a merit review of the case.

Appellant's January 4, 1999 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he 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.

[4] 20 C.F.R. § 10.606(b) (1999).

[5] 20 C.F.R. § 10.608 (1999).

[6] *Jerome Ginsberg*, 32 ECAB 31 (1980).

The February 23, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 10, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member