U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEEN HARRISON and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Hayward, CA

Docket No. 01-1041; Submitted on the Record;
Issued December 6, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record and finds that the Office acted within its discretion in refusing to reopen appellant's case for further reconsideration of the merits.

On July 29, 1992 appellant, then a 44-year-old service representative, filed a notice of occupational disease claiming that the repetitive nature of her federal employment duties and the nonergonomic equipment she used caused her tenosynovitis in both hands. In a report dated October 1, 1992, Dr. R. Scot Forster diagnosed appellant with carpal tunnel syndrome and repetitive stress syndrome. Appellant's claim was accepted on October 21, 1992 for bilateral wrist tendinitis. She underwent physical therapy for her condition and eventually returned to light-duty work. Appellant also received appropriate compensation benefits.

By letter dated March 15, 1995, the Office referred appellant, along with a statement of accepted facts and the medical evidence of record, to Dr. Donald Rohren, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated May 16, 1995, Dr. Rohren diagnosed appellant with bilateral forearm tendinitis, mainly dorsal and stated that appellant continued to suffer residuals due to her accepted employment injury.

In a report dated July 28, 1995, Dr. R. Jay French opined that it seemed unlikely that appellant's diagnosis of repetitive stress syndrome was caused by her previous employment since she had been out of work for two years.

By letter dated October 5, 1998, the Office requested that appellant submit a current medical report from her physician supporting her disability from work and describing her work restrictions.

By letter dated November 17, 1998, the Office referred appellant, along with a statement of accepted facts and medical evidence of record, to Dr. Donald Faust, a Board-certified

orthopedic surgeon, for a second opinion examination. In a report dated December 9, 1998, Dr. Faust stated that appellant's physical examination was normal and that she was no longer suffering from work-related bilateral wrist tendinitis.

On March 25, 1999 the Office issued a notice of proposed termination of compensation finding that the weight of the medical evidence established that appellant no longer suffered from any residuals of the July 20, 1992 work injury.

By decision dated April 28, 1999, the Office finalized the proposed termination of compensation based on Dr. Faust's December 9, 1998 report that appellant's disability as a result of the July 20, 1992 injury had ceased.

By letter dated November 16, 1999, appellant requested reconsideration but did not submit any new or relevant evidence.

By decision dated December 4, 2000, the Office denied appellant's request for review.

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.[1] Because more than one year has elapsed between the issuance of the Office's April 28, 1999 merit decision and March 19, 2001, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the April 28, 1999 decision and any preceding decisions. Therefore, the only decision before the Board is the Office's December 4, 2000 nonmerit decision denying appellant's application for review of its April 28, 1999 decision.

Section 8128(a) of the Federal Employees' Compensation Act[2] does not give a claimant the right upon request or impose a requirement upon the Office to review a final decision of the Office awarding or denying compensation. Section 8128(a) of the Act, which pertains to review, vests the Office with the discretionary authority to determine whether it will review a claim following issuance of a final Office decision. The Office, through regulations, has placed limitations on the exercise of that discretion.

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 that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.[4] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[5] When a claimant fails to

[1] *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[2] 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

[3] 5 U.S.C. §§ 8101-8193.

[4] 20 C.F.R. § 10.606.

[5] 20 C.F.R. § 10.607.

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.[6]

Appellant did not submit any new or relevant evidence in support of her November 16, 1999 request for reconsideration. The only evidence the Office received was an August 30, 2000 letter from appellant indicating that she would no longer place phone calls to the Office because her calls were never answered, and requesting the status of her appeal. Appellant's statement that she would no longer place calls to the Office and that her calls were never answered is irrelevant to the issue at hand and insufficient to require the Office to reopen appellant's case for review.

Appellant has not established that the Office abused its discretion in its December 4, 2000 decision by denying her request for a review of the merits of her claim under section 8128(a) of the Act, because she failed to show that the Office erroneously applied or interpreted a point of law, that she advanced a point of law not previously considered by the Office or that she submitted relevant and pertinent evidence not previously considered by the Office.

The December 4, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.[7]

Dated, Washington, DC
December 6, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[6] 20 C.F.R. § 10.608.

[7] The Board notes that together with her request for an appeal, appellant submitted to the Board numerous factual and medical documents in support of her claim. This appears to be appellant's response to the Office's January 31, 2000 letter requesting additional information. However, the Board may not consider such evidence for the first time on appeal. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(a). Appellant may resubmit this evidence to the Office, together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).