

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HENRY McNEELY, JR. and U.S. POSTAL SERVICE,
FAIRFIELD STATION, Birmingham, AL

*Docket No. 00-1419; Submitted on the Record;
Issued March 26, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant's claim for continuation of pay was timely filed; (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration of the denial of continuation of pay; and (3) whether appellant was injured on March 3, 1999 at the time, place and in the manner he alleged.

On October 22, 1999 appellant, then a 54-year-old motor vehicle operator, filed a traumatic injury claim alleging that, on March 3, 1999, he was hit by an all-purpose cart that someone had pushed into him. Appellant bruised the left knee.

In a November 30, 1999 decision, the Office denied appellant's claim for continuation of pay because his claim had not been filed within the 30-day time limit. The Office stated that the decision did not affect any entitlement appellant might have to other benefits.

In a December 16, 1999 letter, appellant requested a hearing before an Office hearing representative if he was not given reconsideration. He submitted additional evidence, including a March 3, 1999 statement to the employing establishment, which noted the animosity between him and a coworker. Appellant described the March 3, 1999 incident when the coworker saw him and pushed a cart at him, pinning his left leg between the pushed cart and another cart. He stated that when he freed himself, she tried to push the cart at him a second time. When he avoided it, the coworker began to yell that appellant was trying to push a cart into her.

Appellant also submitted a December 10, 1999 note from his supervisor who indicated that appellant had reported to him on March 3, 1999 that a coworker pushed a cart at him. The supervisor reported the incident to the postal investigation service. Appellant's evidence was marked as received by the Office on December 20, 1999.

In a January 4, 2000 decision, the Office denied appellant's claim for compensation on the grounds that he had not established that he sustained an employment injury at the time, place and in the manner alleged.

In a January 28, 2000 decision, the Office denied appellant's request for reconsideration of the November 30, 1999 decision on the grounds that the evidence submitted in support of the request was immaterial. In an accompanying letter, the Office informed appellant that the January 28, 2000 decision applied only to denial of his claim for continuation of pay and not the January 4, 2000 decision denying his claim.

The Board finds that the Office properly denied appellant's claim for continuation of pay.

Section 8118¹ of the Federal Employees' Compensation Act² provides for payment of continuation of pay, not to exceed 45 days, to an employee "who has filed a claim with his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title."³ Section 8122 provides that written notice of injury shall be given within 30 days as specified by section 8119.⁴ Section 8119⁵ requires, in pertinent part, that written notice of the injury shall be given to the employee's immediate supervisor within 30 days after the injury.

In this case, appellant filed his claim for a traumatic injury on October 22, 1999, more than 30 days after his March 3, 1999 employment incident. Therefore, his claim for continuation of pay was not timely filed. Even though appellant's supervisor was informed of the incident on the date it occurred, a written claim arising from the March 3, 1999 incident was not submitted within 30 days of the incident. The Office therefore properly denied appellant's claim for continuation of pay.

The Board further finds that the Office properly denied appellant's request for reconsideration.

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁶ Evidence that repeats or duplicates evidence already in the case record has no

¹ 5 U.S.C. § 8118.

² 5 U.S.C. §§ 8101-8193.

³ See 5 U.S.C. § 8118(a); see also 20 C.F.R. § 10.205(a)(2).

⁴ See 5 U.S.C. § 8122(a)(2).

⁵ 5 U.S.C. § 8119.

⁶ 20 C.F.R. § 10.608(b).

evidentiary value and does not constitute a basis for reopening a case.⁷ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁸

In this case, appellant was seeking reconsideration of the denial of his request for continuation of pay. As the only issue was whether his request for continuation of pay was timely filed, evidence on details of the March 3, 1999 incident were not pertinent to whether a written claim for compensation was submitted within 30 days of the alleged injury. The Office, therefore, properly denied appellant's request for reconsideration of the November 30, 1999 decision.

The Board finds that the case is not in posture for decision on the issue of whether appellant sustained an injury on March 3, 1999 as alleged.

The Act provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim.⁹ Since the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision,¹⁰ it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed,¹¹ it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the issuance of its final decision be addressed by the Office.¹²

In this case, the Office stated in its January 4, 2000 decision that appellant had been asked to submit additional evidence but that none had been received. The record, however, contains appellant's December 16, 1999 statement describing the March 3, 1999 incident and a statement from appellant's supervisor that the incident was reported to him on the date it occurred. The Office received these documents on December 20, 1999.

Although this evidence was included as part of a request for reconsideration, it was most relevant to whether appellant was injured at the time, place and in the manner alleged. This evidence was not addressed in the Office's January 4, 2000 decision. Therefore, that decision must be set aside and the case remanded for further consideration, based on the evidence timely submitted by appellant. After further development as it may find necessary, the Office should issue a *de novo* decision.

⁷ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁸ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁹ 5 U.S.C. § 8124(a); 20 C.F.R. §§ 10.125-10.126.

¹⁰ See 20 C.F.R. § 501.2(c).

¹¹ 20 C.F.R. § 501.6(c).

¹² *William A. Couch*, 41 ECAB 548 (1990).

The decisions of the Office of Workers' Compensation Programs, dated January 28, 2000 and November 30, 1999, are hereby affirmed. The January 4, 2000 decision of the Office is hereby set aside and the case is remanded for further action as set forth in this decision.

Dated, Washington, DC
March 26, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member