U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANGELA J. BROWN and U.S. POSTAL SERVICE,
POST OFFICE, Merrifield, VA

Docket No. 03-895; Submitted on the Record;
Issued July 21, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

This is the second appeal in this case. The Board issued a decision[1] on April 16, 2001 in which it set aside a July 9, 1999 decision of the Office and remanded the case to the Office for a merit review of appellant's claim. The Board found that the Office improperly denied appellant's request for reconsideration, noting that appellant presented a new and relevant legal argument. The facts of the case are set forth in the April 16, 2001 decision and are incorporated by reference.

In 1989 the Office had accepted that appellant sustained bilateral carpal tunnel syndrome due to employment factors. At the time, she was a 33-year-old clerk working for the U.S. Postal Service.[2] In 1991 the Office accepted that appellant sustained an aggravation of bilateral carpal tunnel syndrome due to her typing duties at the employing establishment.[3] By decision dated September 22, 1995, the Office terminated appellant's compensation effective April 29, 1992 on the grounds that the medical evidence showed that she had no employment-related disability after that date. The Office based its termination on the opinion of Dr. Nathan Price, a Board-certified orthopedic surgeon to whom it referred appellant for a second opinion.[4] By decision

[1] Docket No. 00-450 (issued April 16, 2001).

[2] Appellant stopped working for the U.S. Postal Service on August 25, 1990 and began working as a typist for the Department of Health & Human Services on September 10, 1990. She stopped her typing duties in January 1991, stopped working for the employing establishment on April 25, 1991, and resigned effective September 10, 1991 in lieu of being terminated for inability to perform her duties and undocumented leave usage. Appellant received compensation for periods of disability through April 29, 1992.

[3] The two claims (file numbers A25-364433 and A25-417482) have been combined into the present case file.

[4] Dr. Price produced reports dated July 7, September 19 and 20, 1995.

dated and finalized December 30, 1996, an Office hearing representative indicated that he was affirming the Office's September 22, 1995 decision. The Office hearing representative found that, in relying on the opinion of Dr. Price, the Office had only met its burden to terminate appellant's compensation effective September 19, 1995. Therefore, the Office hearing representative effectively modified the Office's prior decision to reflect that the Office had met its burden to terminate appellant's compensation effective September 19, 1995, but had not met its burden to terminate appellant's compensation effective April 29, 1992.[5]

On remand the Office performed a merit review of appellant's claim. By decision dated June 8, 2001, the Office found that appellant was entitled to receive compensation through September 19, 1995.[6] The Office determined that the well-rationalized opinion of Dr. Price justified termination of appellant's compensation effective this date. It indicated that additional medical evidence submitted by appellant, including reports of Drs. Michael Batipps and Kevin N. Hennessy, both attending Board-certified neurologists, did not show that she had employment-related disability after September 19, 1995.

In June 2002 appellant requested reconsideration of her claim; she presented argument and submitted numerous documents in support of her request. By decision dated August 8, 2002, the Office denied appellant's request for reconsideration.

The Board finds that the Office properly refused to reopen appellant's case for further reconsideration of the merits of her claim.

The only decision before the Board on this appeal is the Office's August 8, 2002 decision denying appellant's request for a review on the merits of its June 8, 2001 decision. Because more than one year has elapsed between the issuance of the Office's June 8, 2001 decision and November 6, 2002, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the June 8, 2001 decision.[7]

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[8] 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.[9] 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.[10] When a claimant fails to

[5] By decision dated April 9, 1998, the Office affirmed the December 30, 1996 decision of the Office hearing representative. By decision dated July 8, 1999, the Office denied appellant's request for merit review.

[6] The Office modified its April 9, 1998 decision to clearly reflect this determination.

[7] *See* 20 C.F.R. § 501.3(d)(2).

[8] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[9] 20 C.F.R. §§ 10.606(b)(2).

[10] 20 C.F.R. § 10.607(a).

meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[11]

In support of her reconsideration request, appellant argued that the Office incorrectly accepted her claim as a temporary rather than a permanent condition and that it improperly based its termination of compensation on the opinion of Dr. Price, a Board-certified orthopedic surgeon who served as an Office referral physician.[12] Appellant further argued that other medical evidence of record including an October 15, 1992 report of Dr. Hennessy and a May 7, 1997 report of Dr. Batipps shows that she had employment-related disability after September 19, 1995.[13] However, appellant has already presented these arguments and the Office has considered and denied them. In particular, the Office has considered the sufficiency of the opinion of Dr. Price and determined that this opinion does not show that appellant had employment-related disability after September 19, 1995. Moreover, the Office has considered other medical reports, including the October 15, 1992 report of Dr. Hennessy and the May 7, 1997 report of Dr. Batipps, and found that they do not show continuing employment-related disability.[14] The Board has held that the submission of argument or evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[15]

Appellant submitted a July 27, 2001 report in which Dr. Batipps diagnosed repetitive stress injury of the upper extremities due to past keyboard activity at work; bilateral wrist flexor tendinitis due to the first diagnosis; and bilateral carpal tunnel syndrome due to the first two diagnoses. Dr. Batipps indicated that appellant had "permanent impairment of both upper extremities due to repetitive stress injury and bilateral carpal tunnel syndrome." However, Dr. Batipps provided a diagnosis and assessment of disability which are extremely similar to those he provided in his May 7, 1997 report. As noted above, the Office has already considered this report and determined that it did not show appellant had employment-related disability past September 19, 1995.

Appellant also submitted excerpts from magazines and journals concerning carpal tunnel syndrome. However, the Board has held that such materials are of no evidentiary value in establishing the necessary causal relationship between a disability and employment injury because they are of general application and are not determinative of whether the specifically claimed disability is related to the particular employment injury in question.[16] The Board has

[11] 20 C.F.R. § 10.608(b).

[12] Appellant argued that the opinion of Dr. Price was not based on a complete and accurate factual and medical history and contained an improper diagnosis of her condition.

[13] Both Dr. Hennessy and Dr. Batipps were attending Board-certified neurologists.

[14] Appellant also claimed that on remand the Office did not adequately implement the instructions of the Board's April 16, 2001 decision. However, appellant did not clearly delineate how the Office failed to implement this decision.

[15] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

[16] *William C. Bush*, 40 ECAB 1064, 1075 (1989).

held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[17]

In the present case, appellant has not established that the Office improperly refused to reopen her claim for a review on the merits of its June 8, 2001 decision under section 8128(a) of the Act, because she did not to show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office.

The decision of the Office of Workers' Compensation Programs dated August 8, 2002 is affirmed.

Dated, Washington, DC
July 21, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[17] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).