U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUNE EARL EGAN and DEPARTMENT OF THE AIR FORCE, MILITARY AIRLIFT COMMAND, TRAVIS AIR FORCE BASE, Calif.

Docket No. 96-170; Submitted on the Record;
Issued April 14, 1998

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM, A. PETER KANJORSKI

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

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] As appellant filed her request for appeal on September 1, 1995, the only decision before the Board is the July 27, 1995 nonmerit decision denying appellant's application for review. The Board has no jurisdiction to review the most recent merit decision of record, the August 26, 1994 decision of the Office.

The Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) did not constitute an abuse of discretion.

Section 8128(a) does not require the Office to review final decisions of the Office awarding or denying compensation. This section vests the Office with the discretionary authority to determine whether it will review a claim following the issuance of a final decision by the Office.[2] Although it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under 5 U.S.C. § 8128(a),[3] the Office, through regulations, has placed limitations on the exercise of that discretion with respect to a claimant's request for reconsideration. By these regulations, the Office has stated that it will reopen a claimant's case

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[1] 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[2] *Gregory Griffin*, 41 ECAB 186 (1989).

[3] *See Charles E. White*, 24 ECAB 85 (1972).

and review the case on its merits whenever the claimant's application for review meets the specific requirements set forth in sections 10.138(b)(1) and 10.138(b)(2) of Title 20 of the Code of Federal Regulations.

To require the Office to reopen a case for reconsideration, section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides in relevant part that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

"(i) Showing that the Office erroneously applied or interpreted a point of law; or

"(ii) Advancing a point of law or fact not previously considered by the Office; or

"(iii) Submitting relevant and pertinent evidence not previously considered by the Office."[4]

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.[5]

Evidence which does not address the particular issue involved,[6] or evidence which is repetitive or cumulative of that already in the record,[7] does not constitute a basis for reopening a case. However, the Board has held that the requirement for reopening a claim for a merit review does not include the requirement that a claimant must submit all evidence which may be necessary to discharge his or her burden of proof. Instead, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.[8] Such evidence was not submitted here.

In the July 5, 1995 reconsideration request, appellant failed to advance substantive legal arguments and failed to include any new and relevant evidence not previously considered by the Office. The Office found that the evidence submitted with her reconsideration request consisted of personal statements, medical evidence previously submitted to the record which was, therefore, cumulative as it was already of file and was previously considered by the Office, and medical evidence which was irrelevant as it did not discuss appellant's condition on or after June 15, 1983 as being related to her December 17, 1980 accepted condition.

[4] 20 C.F.R. § 10.138(b)(1).

[5] 20 C.F.R. § 10.138(b)(2).

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

[7] *Eugene F. Butler*, 36 ECAB 393 (1984).

[8] *See Helen E. Tschantz*, 39 ECAB 1382 (1988).

The Board has undertaken a limited review of this application and its accompanying evidence and notes that it fails to advance substantive legal questions or present new and relevant evidence not previously considered by the Office such that it does not address whether appellant had continuing disability on or after June 15, 1983, the date the Office terminated her compensation benefits, causally related to her December 17, 1980 accepted condition of aggravation of degenerative disc disease. Therefore, it did not constitute a basis for reopening appellant's claim for further merit consideration, and the Office did not abuse its discretion by refusing to reconsider appellant's claim on its merits.

Consequently, the decision of the Office of Workers' Compensation Programs dated July 27, 1995 is hereby affirmed.

Dated, Washington, D.C.
April 14, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member