U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAURA L. GIVENS and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, Calif.

Docket No. 96-127; Submitted on the Record;
Issued February 5, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's January 15, 1995 request for reconsideration under 5 U.S.C. § 8128; (2) whether the Office properly denied appellant's request for a hearing; and (3) whether the Office properly found that appellant's May 15, 1995 request for reconsideration was not timely filed and failed to demonstrate clear evidence of error.

The Board has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretion in denying appellant's requests for review.

In this case, in a decision dated January 28, 1994, the Office denied appellant's claim for compensation benefits on the grounds that the medical evidence of record, represented by the opinion of the independent medical examiner, was insufficient to establish that appellant's alleged emotional conditions were proximately caused by the accepted factors of employment.[1] Appellant requested reconsideration on January 15, 1995 and submitted narrative statements from three of her coworkers. By decision dated February 2, 1995, the Office denied appellant's request for review finding that the evidence submitted in support of appellant's application was repetitious, irrelevant and immaterial and not sufficient to warrant review of the January 28, 1994 decision.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[2] Section 10.138(b)(2) provides that when an application for review of the merits of a

[1] Since more than one year elapsed from the January 28, 1994 Office decision to appellant's October 6, 1995 appeal request, the Board lacks jurisdiction to consider the merits of appellant's claim; *see* 20 C.F.R. § 501.2(d).

[2] 20 C.F.R. § 10.138(b)(1).

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.[3]

In her request for reconsideration, appellant reasserted that stress at work caused her current psychological problems and submitted three narrative statements from her coworkers in support of her allegations that her employment environment was emotionally abusive. Specifically, Ms. Joyce Mummert stated that the employing establishment management does keep "dirt files" or "black files" cataloging negative incidents concerning each employee Mr. Louis Johnson stated that the employing establishment's management can be vindictive and discriminatory; and Ms. Ceola Malone stated that in 1991, the individual appellant alleged was sexually harassing her had been suspended for sexual misconduct. In her January 15, 1995 request for reconsideration, appellant submitted no new legal argument, but rather repeated her earlier assertions that her former supervisor "vindictively set up to destroy [her] career." The narrative statements from appellant's coworkers, however, do not relate to events or incidents specific to appellant, and thus are not supportive of her allegation that her psychological problems were caused by her work environment. In addition, the relevant issue in this case is a medical one, and evidence which does not address the relevant issue involved in the case, does not constitute a basis for reopening a claim.[4] As the argument submitted by appellant is duplicative and does not constitute relevant evidence and does not demonstrate that the Office erroneously applied or interpreted a point of law, and the new evidence submitted does not address the relevant medical issue in this claim, the Board finds that the Office properly denied appellant's application for reconsideration of her claim.

The Board further finds that the Office properly denied appellant's request for an oral hearing.

When the Office denied appellant's request for reconsideration on February 2, 1995, appeal rights accompanying the decision advised appellant that she could appeal the decision to the Employees' Compensation Appeals Board.

By letter dated March 27, 1995, appellant requested a "hearing before the DOL, OWCP."[5]

In a decision dated April 28, 1995, the Office denied appellant's request for a hearing because she had previously requested reconsideration and therefore was not, as a matter of right, entitled to a hearing on the same issue. The Office further denied appellant's request for the reason that the issue involved could be equally well resolved by requesting reconsideration from the District office and submitting evidence that her condition was causally related to the accepted factors of her employment.

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[3] 20 C.F.R. § 10.138(b)(2).

[4] *Ernest J. LeBreux*, 42 ECAB 736 (1991).

[5] The Board notes that appellant's March 27, 1995 request for a hearing was addressed to the Employees' Compensation Appeals Board. As appellant clearly requested a hearing before the Board however, appellant's letter was forwarded to the Office.

Section 8124(b)(1) of the Federal Employees' Compensation Act, concerning a claimant's entitlement to a hearing before an Office representative, provides in pertinent part: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[6]

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[7] Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing,[8] when the request is made after the 30-day period for requesting a hearing,[9] and when the request is for a second hearing on the same issue.[10] The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.[11]

In the present case, on January 15, 1995 appellant had requested reconsideration of the Office's denial of her claim. Hence, the Office was correct in stating in its April 28, 1995 decision that appellant was not entitled to a hearing as a matter of right because she made her hearing request after she had requested reconsideration.

While the Office also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, the Office, in its April 28, 1995 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's hearing request on the basis that the issue in the case was causal relationship and could be resolved by submitting additional medical evidence to establish that her claimed emotional condition was causally related to the accepted factors of employment. The Board has held that as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.[12] In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's hearing request which could be

[6] 5 U.S.C. § 8124(b)(1).

[7] *Henry Moreno*, 39 ECAB 475, 482 (1988).

[8] *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

[9] *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

[10] *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

[11] *Stephen C. Belcher*, 42 ECAB 696, 701-02 (1991).

[12] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

found to be an abuse of discretion. For these reasons, the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124.

The Board further finds that the Office properly determined that appellant's May 15, 1995 application for review was not timely filed and failed to present clear evidence of error.

In a letter dated May 15, 1995, appellant stated that her March 27, 1995 letter requesting a hearing had been in error, and that she had intended to request an appeal. Appellant further stated that she again wished to request an appeal. The Office considered appellant's May 15, 1995 letter to be a second request for reconsideration, and by decision dated July 18, 1995, denied appellant's application for review as it was untimely filed and failed to present clear evidence of error.[13]

The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).[14] The Office will not review a decision denying or terminating benefits unless the application for review is filed within one year of the date of that decision.[15] When an application for review is untimely, the Office undertakes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.[16]

As more than one year elapsed from the January 28, 1994 Office merit decision to appellant's May 15, 1995 application for review, the request for reconsideration is untimely. Appellant failed to submit any evidence or argument and, therefore, failed to raise a substantial question as to the correctness of the Office's last merit decision or to shift the weight of the evidence in favor of her claim. As appellant failed to submit evidence of clear error, the Office did not abuse its discretion in denying further review of the case.

[13] The Board notes that even if appellant's March 27, 1995 letter had been considered a request for an appeal to the Board, because more than one year elapsed from the January 28, 1994 Office decision to appellant's March 27, 1995 request, the Board would still have lacked jurisdiction to consider the merits of appellant's claim; *see* 20 C.F.R. § 501.2(d).

[14] 5 U.S.C. § 8128(a).

[15] 20 C.F.R. § 10.138(b)(2).

[16] *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

The July 18, April 28 and February 2, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
February 5, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member