U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUZANNE E. DEMONG and DEPARTMENT OF VETERANS AFFAIRS, SAN DIEGO VETERANS ADMINISTRATION HOSPITAL, San Diego, Calif.

Docket No. 96-2281; Submitted on the Record;
Issued June 29, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

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

On July 19, 1993 appellant, then a 48-year old supervisory social worker, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she developed weakness in her left hand and arm after receiving an Engerix-B vaccine shot in her left arm on April 1, 1993. Appellant did not stop work.

By decision dated December 17, 1993, the Office denied the claim on the basis that the medical evidence submitted failed to establish a diagnosis for the claimed condition and its relationship to appellant's federal employment.

In a letter dated December 28, 1993, appellant requested reconsideration and submitted additional medical reports.

By decision dated January 7, 1994, the Office performed a merit review and denied modification of its prior decision. Specifically, the Office found that the medical evidence was insufficient to establish fact of injury or a relationship between appellant's medical condition and her federal employment.

By letter dated April 15, 1994, appellant requested reconsideration and submitted a medical report dated March 2, 1994 from Dr. Michael R. Swenson, a Board-certified neurologist.

In a medical report dated March 2, 1994, Dr. Swenson noted that appellant's chief complaint is pain in the upper extremity bilaterally, more on the left. He stated that appellant's condition dated back to a vaccination received for Hepatitis B on April 1, 1993. Dr. Swenson stated that, following the vaccination, appellant developed pain and weakness in the arms,

mostly on the left. Dr. Swenson provided examination findings and diagnosed post-vaccination brachial plexitis.

By decision dated July 6, 1994, the Office modified its previous decisions in part to reflect that the basis of denial was changed from failure to establish fact of injury to failure to establish a causal relationship. The Office found that the medical and factual evidence of record were sufficient to support that the incident occurred on April 1, 1993, while appellant was in the performance of duty and that a diagnosed medical condition, brachial plexitis, existed. The Office, however, found that the medical evidence was insufficient to establish that the claimed condition was causally related to the April 1993 work incident.

By letter dated June 28, 1995, appellant requested reconsideration of the Office's prior decision. Appellant claimed that the Office was holding her to a higher standard of proof than other federal employees in establishing a causal relationship between the event and the injury or illness. Appellant submitted her own affidavit outlining her reaction to the hepatitis B vaccine and a one page excerpt from the 1995 physicians' desk reference which outlined adverse reactions to Engerix-B.

By decision dated August 23, 1995, the Office denied appellant's request for reconsideration, on the grounds that the evidence submitted was irrelevant to the issue of causal relationship.

The only decision before the Board on this appeal is that of the Office dated August 23, 1995, in which it declined to reopen appellant's case on the merits of her claim. Since more than one year has elapsed from the date of the issuance of the Office's prior decisions, to the date of the filing of appellant's appeal on July 22, 1996, the Board lacks jurisdiction to review the prior decisions.[1]

The Board finds that the Office properly denied appellant's July 28, 1995 request for reconsideration under 5 U.S.C. § 8128.[2]

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.[3] The Office, through its regulations, has imposed a one-year time limitation for a request of review to be made following a merit decision of the Office.[4] The regulations provide 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

[1] *See* 20 C.F.R. § 501.3(d).

[2] On appeal, appellant submitted new evidence, a letter from Dr. Michael R. Swenson dated May 29, 1996. The Board, however, is precluded from reviewing evidence submitted for the first time on appeal. 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office with a formal request for reconsideration. 20 C.F.R. § 501.7(a).

[3] 5 U.S.C. § 8128(a); *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[4] 20 C.F.R. § 10.138(b)(2).

previously considered by the Office.[5] 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 evidentiary value and does not constitute a basis for reopening a case.[7] Evidence that does not address the particular issue involved, in this case the causal relationship between appellant's brachial plexitis condition and the Hepatitis B vaccination she received on April 1, 1993, also does not constitute a basis for reopening a case.[8] Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.[9]

In its July 6, 1994 merit decision, the Office denied appellant's claim on the grounds that she failed to submit medical evidence which established that she sustained the condition of brachial plexitis causally related to the hepatitis B vaccination on April 1, 1993. The issue, thus, is medical in nature.

In support of her July 28, 1995 request for reconsideration, appellant submitted a sworn statement about the course of her condition and an excerpt of a 1995 Physicians' Desk Reference noting the adverse reactions to Engerix-B. These submissions do not contain a medical opinion concerning any causal relationship between appellant's claimed conditions and her vaccination on April 1, 1993. Moreover, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.[10] Therefore, this evidence does not pertain to the relevant issue of the case, *i.e.*, whether appellant has submitted sufficient rationalized medical evidence to establish that she sustained an employment-related injury. The Board has held that the submission of evidence which does not address the particular issue involved is of little probative value.[11]

Appellant contended that the Office is holding her to a higher standard of proof than other Federal employees. Appellant, however, has not provided any evidence to support this

[5] 20 C.F.R. § 10.138(b)(1).

[6] *Supra* note 4.

[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 (1979).

[9] *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

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

[11] *Supra* note 8.

statement nor advanced any legal argument with respect to them. Thus, the argument that appellant is held to a higher standard of proof has no reasonable color of validity.[12]

Appellant has, therefore, not submitted any new and relevant medical evidence, advanced a point of law or fact not previously considered by the Office or shown that the Office erroneously applied or interpreted a point of law.

The decision of the Office of Workers' Compensation Programs dated August 23, 1995 is hereby affirmed.

Dated, Washington, D.C.
June 29, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[12] *Nora Favors*, 43 ECAB 403 (1992); *Constance G. Mills*, 40 ECAB 317 (1988).