-U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND CISNEROS and DEPARTMENT OF THE AIR FORCE, KELLY AIR FORCE BASE, San Antonio, Tex.

Docket No. 96-2004; Submitted on the Record;
Issued May 22, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's December 30, 1995 request for reconsideration under 5 U.S.C. § 8128.

The Board has duly reviewed the evidence of record in this appeal and finds that the Office did not abuse its discretion in denying appellant's December 30, 1995 request for reconsideration under 5 U.S.C. § 8128.

On April 28, 1992 appellant, then an air conditioning equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured both legs and lower back when his right leg went numb which caused him to fall while walking toward the equipment room.[1] Appellant stopped work on April 30, 1992.[2]

The Office accepted appellant's claim for lumbosacral strain.

On April 24, 1995 the Office provided appellant with a notice of proposed reduction of compensation finding that appellant was no longer totally disabled, but rather that appellant was partially disabled. The Office also found that appellant had the capacity of earning wages as a telephone solicitor. In an accompanying memorandum, the Office found that the position of telephone solicitor was medically and vocationally suitable, and represented appellant's wage-earning capacity.

[1] On May 13, 1992 appellant filed a claim (Form CA-2a) alleging that on April 28, 1992 he experienced a recurrence of disability of a February 3, 1987 injury.

[2] Appellant was terminated from the employing establishment on March 19, 1993 for being unable to perform the duties of the position of air conditioning equipment mechanic due to medical restrictions.

By decision dated May 24, 1995, the Office reduced appellant's compensation effective May 28, 1995 on the grounds that the weight of the evidence of record established that the position of telephone solicitor was medically and vocationally suitable, and represented appellant's wage-earning capacity.

In a December 30, 1995 letter, appellant requested reconsideration of the Office's decision.

By decision dated March 19, 1996, the Office denied appellant's request for reconsideration without reviewing the merits of the claim on the grounds that the evidence submitted was irrelevant.

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.[3] Inasmuch as appellant filed his appeal with the Board on June 17, 1996, the only decision properly before the Board is the Office's March 19, 1996 decision denying appellant's request for reconsideration.

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act.[4] 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.[5] Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without review of the merits of the claim.[6]

In support of his request for reconsideration, appellant submitted a letter dated November 10, 1995 from Sunwest Concepts, Incorporated indicating that appellant was employed on November 2, 1995 as a truck driver and that after two days of employment, appellant was released from duty because he was unable to perform the duties of a truck driver. Appellant also submitted a payroll check from Sunwest Concepts, Incorporated in the amount of $73.88 for 16 hours of work. The Board finds that this evidence is not relevant to the issue in this case, whether the Office properly reduced appellant's compensation benefits, effective May 28, 1995, based on its determination that the position of telephone solicitor was medically and vocationally suitable, and represented appellant's wage-earning capacity. Evidence that does not address the relevant issue involved in the case does not constitute a basis for reopening a claim.[7] Appellant has failed to submit any new and relevant evidence to substantiate that the

[3] *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[4] 5 U.S.C. § 8128(a).

[5] *Thankamma Mathews*, 44 ECAB 788 (1993); 20 C.F.R. § 10.138(b)(1).

[6] 20 C.F.R. § 10.138(b)(2).

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

position of telephone solicitor was not medically and vocationally suitable, and represented his wage-earning capacity. Additionally, appellant has failed to establish that the Office erroneously applied or interpreted a point of law or to advance a point of law or fact not previously considered by the Office. Therefore, the Board finds that the Office was not required to review the merits of appellant's claim.[8]

The March 19, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
May 22, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[8] *Nora Favors*, 43 ECAB 403 (1992).