U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT E. ROBITAILLE and DEPARTMENT OF THE NAVY, MARE ISLAND NAVAL SHIPYARD, Vallejo, Calif.

Docket No. 96-2655; Submitted on the Record;
Issued October 7, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

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 request for review.

On September 13, 1979 appellant filed a claim for a traumatic injury which occurred on August 27, 1979 in the performance of duty. The Office accepted appellant's claim for a herniated disc and a left wrist injury. Appellant returned to limited-duty employment until his resignation from the employing establishment effective March 25, 1983. By decision dated May 1, 1991, the Office denied appellant's claim for compensation on the grounds that the evidence did not establish that he sustained a recurrence of disability after December 29, 1982 causally related to his accepted employment injury. In merit decisions dated May 15, 1992, May 3, 1993, May 4, 1994 and May 25, 1995, the Office denied appellant's requests for reconsideration.[1] By decision dated May 23, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant review of the prior decision.

The only decision before the Board is the Office's May 23, 1996 decision denying appellant's request for review of the merits of the case. There is no other Office decision issued

[1] In its May 15, 1992 decision, the Office modified its prior decision to reflect that appellant had refused to work after suitable work was procured for him in accordance with 5 U.S.C. § 8106(c). The Office further found that appellant had not established that he sustained an emotional condition due to factors of employment. In its May 25, 1995 decision, the Office found that it had inappropriately applied section 8106(c) in its May 15, 1992 decision. The Office found, however, that appellant had not established that he sustained a recurrence of disability such that he could not perform his limited-duty employment at the time of his resignation from the employing establishment and thus had not submitted evidence sufficient to warrant modification of the Office's determination that he was not entitled to compensation benefits.

within one year of the date appellant filed his appeal, August 30, 1996, over which the Board has jurisdiction.[2]

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by written request to the Office identifying the decision and the 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
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> "(ii) Advancing a point of law or fact not previously considered by the Office, or
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> "(iii) Submitting relevant and pertinent evidence not previously considered by the Office."[3]

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.[4] 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.[5] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[6]

In support of his request for reconsideration, appellant submitted a statement he wrote to the Office, an August 7, 1993 letter from the employing establishment to the Office, and a copy of his service record, all of which had been previously considered by the Office. Appellant further argued, in his May 15, 1996 request for reconsideration, that he did not voluntarily resign from the employing establishment and that the employing establishment did not have limited-duty employment available for him at the time of his resignation. The Office, however, previously considered and rejected appellant's arguments. Thus, this evidence is duplicated and is already contained in the case record and did not constitute a basis for reopening appellant's case for merit review under 20 C.F.R. § 10.138.[7]

Appellant further argued that his current left wrist condition is causally related to his accepted employment injury; however, lay persons are not competent to render a medical

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[2] *See* 20 C.F.R. § 501.3(d)(2).

[3] 20 C.F.R. § 10.138(b)(1).

[4] *See* 20 C.F.R. § 10.138(b)(2).

[5] *Daniel Deparini*, 44 ECAB 657 (1993).

[6] *Id.*

[7] *Richard L. Ballard*, 44 ECAB 146 (1992).

opinion, and therefore, appellant's statement does not constitute relevant and pertinent evidence not previously considered by the Office.[8]

An abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probably deductions from known facts.[9] Appellant has made no such showing here.

The decision of the Office of Workers' Compensation Programs dated May 23, 1996 is hereby affirmed.

Dated, Washington, D.C.
October 7, 1998

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[8] *See James A. Long*, 40 ECAB 538 (1989).

[9] *Rebel L. Cantrell*, 44 ECAB 660 (1993); *Wilson L. Clow*, 44 ECAB 157 (1992).