U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAMUEL F. KNIGHT and TENNESSEE VALLEY AUTHORITY, BELLEFONTE NUCLEAR PLANT, Hollywood, Ala.

Docket No. 96-1557; Submitted on the Record;
Issued September 23, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS, WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

The only Office decision before the Board on this appeal is the Office's February 9, 1996 decision finding that appellant's application for review was not sufficient to warrant review of its prior decision. Since more than one year elapsed between the date of the Office's most recent merit decision on December 23, 1994 and the filing of appellant's appeal on April 16, 1996, the Board lacks jurisdiction to review the merits of appellant's claim.[1]

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
>
> (1) end, decrease, or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that

[1] 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed.

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. 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.[2] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[3]

In the present case, the Office, by its December 23, 1994 decision, refused to modify its November 30, 1993 decision reducing appellant's compensation on the basis that he was only partially disabled and had the capacity to earn wages as a telephone solicitor. In the December 23, 1994 decision, the Office noted that physical ailments which preexisted the accepted condition must be taken into consideration when selecting a job for purposes of determining wage-earning capacity, but found that there was "no evidence on file to establish that the claimant had a preexisting disabling back condition prior to the October 24, 1984 work injury."

With his November 10, 1995 request for reconsideration of the Office's December 23, 1994 decision, appellant submitted a copy of a note from Dr. Garry L. Cook, a chiropractor, stating that the date of appellant's first visit was November 30, 1979. This note was already in the case record at the time of the Office's December 23, 1994 decision, and therefore does not constitute relevant evidence not previously considered by the Office. Appellant also submitted copies of bills from and checks to Dr. Cook, some of which were dated before October 23, 1984. Obviously the bills for services after October 23, 1984 do not bear on whether appellant had a back condition preexisting his October 23, 1984 employment injury, and are thus not relevant. The bills and checks for chiropractic services before October 23, 1984 also are not relevant, as they do not show that degenerative disc disease diagnosed in 1994, which appellant contends would prevent him from performing the duties of a telephone solicitor, preexisted his October 23, 1984 employment injury.[4] Suffering from the same defect is a February 10, 1995 report from Dr. Gary D. Snook, a Board-certified orthopedic surgeon. This report states that appellant has a degenerative back condition which probably will not improve over time, but does not indicate that this condition preexisted his October 23, 1984 employment injury. In conjunction with his November 10, 1995 request for reconsideration, appellant has not submitted relevant evidence not previously considered by the Office, and the Office therefore properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

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

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

[4] The Office accepted that appellant sustained an employment-related low back strain on June 18, 1979, but appellant does not contend that this is the back condition that would prevent him from performing the duties of a telephone solicitor beginning in 1993.

The decision of the Office of Workers' Compensation Programs dated February 9, 1996 is affirmed.

Dated, Washington, D.C.
September 23, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member