U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL T. HARRINGTON and U.S. POSTAL SERVICE,
POST OFFICE, Sioux City, Iowa

Docket No. 97-6; Submitted on the Record;
Issued September 4, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further merit review pursuant to 5 U.S.C. § 8128.

This is the second appeal in this case.[1] By decision dated March 17, 1995, the Board affirmed the Office's October 8, 1993 and February 25, 1994 decisions terminating appellant's compensation but modified the effective date of termination to November 2, 1992, finding that the conflict in the medical evidence concerning whether appellant had any residuals of his accepted employment injury was not resolved until the Office received the report of Dr. Lipsey, a Board-certified orthopedic surgeon and impartial medical examiner. The facts and circumstances of this case are more fully set forth in the Board's March 17, 1995 decision and are herein incorporated by reference.

Following the Board's March 17, 1995 decision, appellant requested that the Office reopen his case for further merit review. In support of his request for reconsideration, appellant submitted a March 13, 1996 report and September 12, 1995 magnetic resonance imaging (MRI) report by Dr. Horst G. Blume, a Board-certified neurosurgeon, two unsigned reports from the Headache and Pain Control Center dated July 18 and October 6, 1995, a review of the MRI scan by Dr. Kenneth B. Heithoff, a Board-certified radiologist, and a February 1, 1996 report by Dr. Gary L. Tapper, a chiropractor.

In a decision dated June 12, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted with his request was irrelevant or cumulative in nature and therefore was not sufficient to reopen the record for merit review.

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[1] *See* Docket No. 94-1422 (issued March 17, 1995).

The Board has carefully reviewed the entire case record on appeal and finds that the Office did not abuse its discretion in refusing to reopen the record for further merit review.

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. As appellant filed his appeal with the Board on September 10, 1996, the only decision before the Board is the Office's June 12, 1996 decision.[2]

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. 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 reviewing the merits of the claim.[3] 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.[4] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[5]

In the present case, the record reveals that appellant's compensation benefits were terminated based on the well-reasoned and rationalized report by Dr. Lipsey, an impartial medial examiner, who resolved the conflict in the medical evidence between the reports of Dr. Blume and Dr. John V. Goldner, a Board-certified neurologist, who acted as an impartial medical examiner earlier in the claim's development. For this reason, the subsequent report by Dr. Blume which is essentially repetitive of his prior reports is insufficient to outweigh the special weight given the report by Dr. Lipsey as Dr. Blume participated in the creation of the conflict which was referred to Dr. Lipsey for resolution,[6] and his report is cumulative in nature. Similarly, the report by Dr. Tapper, that reiterates his belief that appellant's back injury is not healed, is repetitive of his earlier reports which have previously been considered by the Office and is also cumulative and insufficient to warrant further merit review. The review of the MRI scan by Dr. Heithoff is irrelevant as he merely confirms previously accepted employment conditions and previously noted concurrent medical conditions which were not related to appellant's federal employment. As Dr. Heithoff does not address whether appellant has any residuals of his accepted employment injury of low back strain and temporary aggravation of his preexisting spondylolisthesis, his report is irrelevant. The MRI scan interpreted by Dr. Blume is irrelevant as it also fails to address the central issue. Finally, the unsigned office notes from the Headache and Pain Control are repetitive of medical notes and reports previously considered by the office and are therefore not sufficient to warrant merit review in this case. Appellant has not submitted

[2] *See* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[3] 20 C.F.R. § 10.138(b)(2).

[4] *Sandra F. Powell,* 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

[5] *Dominic E. Coppo,* 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

[6] *Josephine L. Bass*, 43 ECAB 929 (1992); *see Dorothy Sidwell,* 41 ECAB 857 (1990).

new or relevant evidence, has not advanced a fact or point of law not previously considered by the Office and has not shown that the Office erroneously applied or interpreted a point of law. Therefore, the Office properly denied his request for reconsideration.

The decision of the Office of Workers' Compensation Programs dated June 12, 1996 is hereby affirmed.

Dated, Washington, D.C.
September 4, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member