U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLENE ALEXANDER and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, TX

Docket No. 97-1245; Submitted on the Record;
Issued August 13, 1999

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs' denial of appellant's motion for reconsideration pursuant to section 8128 of the Federal Employees' Compensation Act constituted an abuse of discretion.

On April 2, 1986 appellant, then a 41-year-old markup clerk, filed an occupational disease claim, alleging that she sustained injury to her back while in the performance of duty. The Office accepted the claim for lumber strain with nerve root irritation appellant. Appellant filed several claims for recurrence of disability. Appellant worked intermittently until March 1990 when she became temporarily totally disabled. Appellant also underwent several surgeries related to her accepted employment injury. The Office paid appropriate compensation for all periods of temporary total disability.

The Office referred appellant for rehabilitation services. In a June 1993 report, James R. Self, a rehabilitation specialist, determined that appellant was capable of working in one of three positions, either as paralegal assistant, a clerical secretary or a telephone operator. Mr. Self forwarded this information to appellant's attending physician of record Dr. Charles R. Vivran. In an office note dated June 29 1993, Dr. Vivran indicated that all of the positions submitted by Mr. Self were within appellant's restrictions.

In a letter dated September 28, 1993, the Office proposed reduction of appellant's compensation on the grounds that she was no longer disabled and had the capacity to earn wages as a clerical secretary. In a decision dated December 6, 1993, the Office determined that appellant's wage-earning capacity was $342.46 per week as represented by a full-time position as a clerical secretary and adjusted her compensation from that of total disability to that of partial disability effective December 12, 1993.

By decision dated April 28, 1994, an Office hearing representative affirmed the December 6, 1993 decision of the Office. In merit decisions dated December 14, 1994 and

December 19, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to establish that modification of the prior decisions was warranted. In a decision dated April 30, 1996, the Office denied appellant's request for a hearing on the grounds that she had first requested reconsideration in her claim and the Office had last issued a decision in this regard on December 19, 1995. In decisions dated September 23, 1996 and February 4, 1997, the Office denied appellant's requests for reconsideration on the grounds that the evidence submitted was not sufficient to warrant merit review.

The Board has duly reviewed the entire case on appeal and finds that the Office properly denied appellant's request for reconsideration.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her 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.[1] 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, appellant submitted a plethora of medical and factual information with her requests for reconsideration, however, the evidence submitted is cumulative in nature and/or is immaterial to the central issue, *i.e.*, whether the Office properly determined that the full-time position of clerical secretary represented appellant's wage-earning capacity effective December 12, 1993. The evidence submitted reveals that appellant began work with a temporary employment agency and sustained a new injury on February 3, 1995. The Texas Workers' Compensation Commission approved appellant's workers' compensation claim and authorized surgery in relation to appellant's back condition. Essentially all of the information submitted by appellant on reconsideration addresses appellant's February 1995 injury and how that condition worsened over time. However, appellant did not present any rationalized medical report evidence that establishes that appellant's February 1995 injury was a recurrence of disability of her 1986 employment injury. As the evidence submitted by appellant does not demonstrate that there was a material change in the nature or extent of her accepted employment injury, does not reveal that appellant was retrained or that the original determination was in fact erroneous, the evidence is cumulative in nature and does not address the central issue in this case.[4] Therefore,

[1] 20 C.F.R. § 10.138(b)(2).

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

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

[4] *Don J. Mazuek*, 46 ECAB 447 (1995); *Odessa C. Moore*, 46 ECAB 681 (1995).

the evidence submitted on reconsideration is not sufficient to warrant reopening the case record and the Office properly denied appellant's request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated February 4, 1997 and September 23, 1996 are hereby affirmed.

Dated, Washington, D.C.
August 13, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member