U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES R. BLACKBURN and U.S. POSTAL SERVICE,
POST OFFICE, San Francisco, CA

Docket No. 97-2169; Submitted on the Record;
Issued August 10, 1999

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

The only Office decision before the Board on this appeal is the Office's April 14, 1997 decision, finding that the evidence submitted in support of appellant's application for review was not sufficient to warrant review of its prior decision. In a decision dated July 18, 1995, the Office terminated appellant's entitlement to compensation benefits on the grounds that the weight of the medical evidence, represented by the opinion of the independent medical examiner, established that appellant no longer had any disability or residuals of his accepted lumbar strain and aggravation of degenerative disc disease. In merit decisions dated August 1 and December 18, 1995, the Office found that the additional medical evidence submitted by appellant in support of his requests for reconsideration was insufficient to warrant modification of the Office's July 18, 1995 decision. Because more than one year elapsed between the most recent merit decision of record, the Office's December 18, 1995 decision and the filing of appellant's appeal on June 17, 1997, the Board lacks jurisdiction to review the merits of appellant's claim.[1]

[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.

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 --
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> (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 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 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.

The Board finds that the Office, by its April 14, 1997 decision, properly refused to reopen appellant's case for review of the merits of his claim under 5 U.S.C. § 8128.

Appellant's January 6, 1997 request for reconsideration was accompanied by evidence not previously considered by the Office: an October 7, 1996 magnetic resonance imaging (MRI) report and narrative medical reports dated August 15 and October 17, 1996 from Dr. Kenneth I. Light, a Board-certified orthopedic surgeon and a treating physician. In his August 15, 1995 report, Dr. Light noted that he had seen appellant on two prior occasions for symptoms of low back pain radiating into his hip, reported to have been present since 1986. Dr. Light performed a physical examination and reviewed a 1986 MRI scan which revealed a degenerative protrusion of the L4-5 disc. He diagnosed appellant as having a degenerative disc at L4-5 and recommended a repeat MRI. Dr. Light concluded that appellant could perform some type of work, within certain physical restrictions. On October 7, 1996 appellant underwent an MRI which revealed a moderate sized, broadbased central protrusion, L5-S1, resulting in a mild central canal stenosis and a small broadbased central protrusion, L4-5, resulting in a mild central canal stenosis. In his report dated October 17, 1996, Dr. Light reviewed the results of the MRI, noting that it showed a "central prolapse of the L5-S1 disc and a smaller central prolapse at the L4-5 disc." He further noted that "both discs are desiccated, they are degenerative and are likely the source of his problem, the L5-S1 more so than the L4-5." Dr. Light concluded that appellant could perform sedentary work within certain physical restrictions.

The results of the October 7, 1996 MRI are substantially the same as those of the prior MRI of record, dated September 25, 1986, previously considered by the Office, which was interpreted by a physician as revealing degenerative disc disease at the L4-5 and L5-S1 levels, central disc protrusion with mild compression of the thecal sac at the L4-5 level and broadbased disc bulge at the L5-S1 level, without evidence of significant compression. Therefore, the newly submitted MRI report is cumulative and repetitious in nature and is insufficient to warrant merit

review of the prior decision.[2] Similarly, the recent reports from Dr. Light are also substantially similar to his two earlier reports, already contained in the record and previously considered by the Office and further address only appellant's preexisting degenerative back disease, a condition not accepted by the Office as employment related and do not address the issue on which reconsideration was requested: whether appellant continues to suffer from disability or residuals causally related to his accepted lumbar strain or aggravation of degenerative disc disease.[3] Therefore, these reports are not sufficient to require the Office to reopen appellant's case for review of the merits of his claim.

The decision of the Office of Workers' Compensation Programs dated April 14, 1997 is affirmed.

Dated, Washington, D.C.
August 10, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[2] Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case. *James A. England*, 47 ECAB 115 (1995).

[3] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case. *Barbara A. Weber*, 47 ECAB 163 (1995).