U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HANS R. DASSEN and U.S. POSTAL SERVICE,
POST OFFICE, Santa Ana, Calif.

Docket No. 97-809; Submitted on the Record;
Issued February 3, 1999

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant is entitled to a schedule award following his December 28, 1992 refusal of suitable employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for further review of his case on its merits under 5 U.S.C. § 8128.

The Board has given careful consideration to the issues involved, the contentions of appellant on appeal, and the entire case record. The Board finds that the July 11, 1996 decision of the Office's hearing representative is in accordance with the facts and the law in this case, and hereby adopts the findings and conclusions of the hearing representative.[1]

The Board, therefore, finds that appellant is not entitled to a schedule award following his December 28, 1992 refusal of suitable employment, in accordance with 5 U.S.C. § 8106(c) and 20 C.F.R. § 10.124(e).[2]

On September 23, 1996 appellant requested reconsideration of the hearing representative's decision, and he submitted copies of various documents, all of which had been previously submitted, reviewed and considered by the Office in preparation for the hearing representative's July 11, 1996 decision. Appellant also argued that since he felt that he had not

[1] The Board, however, notes that a typographic error resulted in an initially incorrect cite of the date of appellant's maximum medical improvement as July 7, 1992, but that it was later corrected by the hearing representative to July 7, 1994.

[2] 5 U.S.C. § 8106(c) states that "a partially disabled employee who refuses to seek suitable work; or refuses or neglects to work after suitable work is offered to, procured by, or secured for him; is not entitled to compensation." 20 C.F.R. § 10.124(e) states that "a partially disabled employee who, without showing sufficient reason or justification, refuses … suitable work, is not entitled to further compensation for total disability, partial disability, or permanent impairment as provided by sections 8105, 8106 and 8107 of the Federal Employees' Compensation Act…."

been properly informed of what "terminate compensation" meant,[3] the December 28, 1992 termination decision and the June 5, 1995 decision denying his request for a schedule award were incorrect.

The Office properly performed a limited review of this evidence and argument, noted that the documentary evidence had been previously submitted and considered by the Office, and noted that the arguments appellant proferred had been previously made and considered by the hearing representative in the July 11, 1996 decision. Finding no new evidence or argument presented, the Office denied appellant's request for a reconsideration of the case on its merits by decision dated December 11, 1996.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for further review of his case on its merits under 5 U.S.C. § 8128.

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.[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] In this case, both the documentary evidence submitted by appellant and the argument made by him, had been previously submitted for consideration by the Office. Consequently, he failed to provide a basis for reopening his case for further review on its merits.

As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.[6] Such a showing of abuse was not made here.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated December 11 and July 11, 1996 are hereby affirmed.

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[3] Appellant claimed that he thought "terminate compensation" referred only to his wage-loss compensation being received at that moment and not to future compensation benefits for wage loss or to any schedule award. He argued that he was not advised of "further sanctions," and that he was not provided a "legislative history and Board precedent" concerning the intent of 5 U.S.C. § 8106(c). Appellant also argued that in 1992 if he had been told that the only acceptable reasons for refusal of suitable work were work-related reasons, as opposed to personal reasons, and that "terminate compensation" meant all present and future compensation entitlement, he might have rethought his job refusal, such that the termination decision of December 28, 1992 was improper, as was the June 5, 1995 decision denying his schedule award citing 5 U.S.C. § 8106(c).

[4] 20 C.F.R. § 10.138(b)(2).

[5] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[6] *Daniel J. Perea*, 42 ECAB 214 (1990).

Dated, Washington, D.C.
February 3, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member