U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VINCENT P. RIGGIO and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Brooklyn, N.Y.

Docket No. 96-1857; Submitted on the Record;
Issued January 19, 1999

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for review of the merits pursuant to 5 U.S.C. § 8128(a).

On January 3, 1991 appellant filed a claim for a traumatic injury resulting from a motor vehicle accident on December 28, 1990. On the claim form appellant indicated that he sustained multiple contusions from his hips to his ribs on the right side and a "slight tingling sensation in his legs." The Office accepted the claim for a right hip contusion, lumbar stenosis and subluxation. Appellant stopped work on December 31, 1990 and returned to work on January 2, 1991.

On October 7, 1993 appellant filed a claim for compensation for total wage-loss disability beginning September 29, 1993. In an attending physician's report dated October 7, 1993, Dr. Martin A. Lehman, a Board-certified orthopedic surgeon, found that appellant was totally disabled from employment due to back problems resulting from his motor vehicle accident. The Office notified appellant on November 12, 1993 that it had accepted his claim for a recurrence of disability.

In a report dated April 25, 1994, Dr. Alfred Bannerman, a Board-certified neurolgoist and Office referral physician, opined that appellant had multiple sclerosis unrelated to his motor vehicle accident. He stated that the motor vehicle accident may have increased appellant's symptoms of multiple sclerosis but were not a causative factor. Dr. Bannerman further found that appellant could perform light-duty employment and that there were no objective findings substantiating continuing problems from his accepted employment injuries.

Based on the report of Dr. Bannerman, by decision dated June 6, 1994, the Office terminated appellant's compensation benefits effective April 30, 1994 on the grounds that he had no further disability due to his December 28, 1990 employment injury.

Appellant requested a hearing before an Office hearing representative. At the hearing, held on December 12, 1994, appellant submitted, *inter alia*, articles from medical journals discussing the relationship between trauma and multiple sclerosis.

By decision dated January 30, 1995, the Office hearing representative affirmed the Office's June 6, 1994 decision.

On December 27, 1995 appellant through his attorney, requested reconsideration and submitted additional medical evidence.

By decision dated February 29, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and thus insufficient to warrant review of the prior decision.

The Board finds that the Office abused its discretion by refusing to reopen appellant's case for review of the merits pursuant to 5 U.S.C. § 8128(a).

The only decision over which the Board has jurisdiction is the February 29, 1996 decision which denied appellant's request for a review of the merits of the case. Because more than one year has elapsed between the issuance of the Office's decision dated January 30, 1995 and May 24, 1996, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the January 30, 1995 decision.[1]

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by written request to the Office identifying the decision and the specific issue(s) within the decision which claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

"(i) Showing that the Office erroneously applied or interpreted a point of law, or

"(ii) Advancing a point of law or fact not previously considered by the Office, or

"(iii) Submitting relevant and pertinent evidence not previously considered by the Office."[2]

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.[3] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does

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

[2] 20 C.F.R. § 10.138(b)(1).

[3] *See* 20 C.F.R. § 10.138(b)(2).

not constitute a basis for reopening a case.[4] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[5]

The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence which may be necessary to discharge his burden of proof.[6] The requirements pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.[7] If the Office should determine that the new evidence submitted lacks substantive probative value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.[8]

In support of his request for reconsideration, appellant submitted factual and medical evidence previously of record. Copies of evidence previously considered by the Office are cumulative and repetitive in nature and are therefore not sufficient to warrant a merit review of the case.[9]

Appellant further submitted a newspaper clipping and excerpts from medical texts regarding the role of trauma in the development or aggravation of multiple sclerosis. However, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing causal relationship as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.[10] Similarly, the court cases submitted by appellant which address the issue of trauma and multiple sclerosis do not constitute relevant and probative new evidence as their findings are not specific to appellant and as the Board has held that findings by other agencies are not relevant in determining disability under the Act.[11]

Appellant also submitted reports dated March 15 and July 10, 1995 from Dr. Lehman. In these reports, he opined that appellant remained disabled due to his back condition, which the physician attributed to the December 28, 1990 motor vehicle accident. However, these reports are substantially similar to prior reports from Dr. Lehman previously considered by the Office and thus are insufficient to warrant a reopening of the case for merit review.

---

[4] *Daniel Deparini*, 44 ECAB 657 (1993).

[5] *Id.*

[6] *Helen E. Tschantz*, 39 ECAB 1382 (1988).

[7] *See* 20 C.F.R. § 10.138(b).

[8] *Dennis J. Lasanen*, 41 ECAB 933 (1990).

[9] *Eugene F. Butler*, 36 ECAB 393 (1984) (where the Board held that 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).

[10] *William C. Bush*, 40 ECAB 1064 (1989).

[11] 5 U.S.C. §§ 8101-8193; *Daniel Deparini*, 44 ECAB 657 (1993).

In a report dated December 4, 1995, Dr. Lehman found that appellant had recurrent pain in his back with radiculites of the left lower extremity due to his December 28, 1990 employment injury. He further discussed appellant's diagnosis of multiple sclerosis and opined that the motor vehicle accident caused his disability. The record does not contain a prior report from Dr. Lehman considered by the Office in which the physician addressed the issue of appellant's multiple sclerosis. As this report was not previously of record and is relevant to the issue of whether appellant has any continuing disability due to his accepted employment injury, it is sufficient to require the Office to conduct a merit review of the case.

Additionally, appellant submitted reports dated March 8 and May 8, 1995 from Dr. Richard Michalowicz, a Board-certified internist, who treated appellant following his motor vehicle accident. In his report dated March 8, 1995, the physician discussed appellant's diagnosis of multiple sclerosis. In his report dated May 8, 1995, Dr. Michalowicz discussed appellant's "paresthesias and loss of sensation of both legs" immediately following his December 28, 1990 motor vehicle accident and opined that the accident caused appellant to develop multiple sclerosis. The Office determined that Dr. Michaelowicz's opinion was insufficient to warrant a merit review of the case as he did not explain the findings in his May 8, 1995 report. However, as discussed above, the Office may consider the probative value of newly submitted evidence only after conducting a merit review of the case.[12]

Appellant also submitted new and relevant medical reports from Dr. Sidney M. Cohen, a Board-certified neurologist, who based his opinion on a review of appellant's medical records. In reports dated May 15 and November 30, 1995, Dr. Cohen discussed appellant's history of injury and medical treatment received, the results of objective tests and concluded that he "sustained a precipitation of multiple sclerosis resulting from the trauma induced by the motor vehicle accident of December 28, 1990. Dr. Cohen supported his findings by citing to medical texts.

In its February 29, 1996 decision, the Office found that Dr. Cohen's reports were of no evidentiary value because he did not examine appellant. However, while the Board has held that the medical opinion of a physician who had the opportunity to personally examine appellant may have greater probative value than a physician who does not perform an examination,[13] this does not mean that the report of a reviewing physician is of no probative value. Additionally, the pertinent issue in the instant case is not the weight to be accorded Dr. Cohen's opinion but rather the determination of whether his reports constitute relevant evidence not previously considered by the Office.

In this case, as noted above, appellant has submitted new and relevant evidence in support of his request for reconsideration. Therefore, the case shall be remanded to the Office to review the entire case record. After such further development as is deemed necessary, the Office shall issue a *de novo* decision on the merits of the case.

[12] *Dennis J. Lasanen*, *supra* note 8.

[13] *Dean E. Pierce*, 40 ECAB 1249 (1989).

The decision of the Office of Workers' Compensation Programs dated February 29, 1996 is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
January 19, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member