U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. HOWELL and DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, Sacramento, CA

Docket No. 98-63; Submitted on the Record;
Issued July 21, 1999

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

The Office accepted that appellant sustained cervical pain syndrome and low back syndrome due to a traumatic injury on September 24, 1987. By decision dated February 28, 1994, the Office terminated appellant's entitlement to benefits and authorization for medical treatment on the grounds that the medical evidence established that she had no further condition or disability causally related to her accepted employment injury. The Office found that the October 26, 1988 report of Dr. George E. Sims, a Board-certified orthopedic surgeon and Office referral physician, constituted the weight of the medical evidence and established that appellant had no further residual employment-related condition or disability. By decision dated December 14, 1995, an Office hearing representative affirmed the Office's February 28, 1994 decision.[1]

By letter dated December 15, 1995, appellant requested reconsideration and submitted additional medical evidence from Dr. Newman, a Board-certified internist and her attending physician , who diagnosed myofascial pain due to her employment injury.

The Office referred appellant to Dr. Murray Barry, a Board-certified internist, to resolve the conflict between Dr. Newman and Dr. Sims regarding whether appellant had any orthopedic residuals of her employment injury. In a report dated April 8, 1996, Dr. Sims diagnosed fibromyalgia, depression and obesity and found that her September 24, 1987 employment injury did not cause her fibromyalgia and that her depression and obesity predated her employment

[1] The hearing representative initially issued a decision on November 25, 1994; however, appellant had filed an appeal before the Board on November 7, 1994. The Board dismissed appellant's appeal on the Director's motion and found that the Office's November 25, 1994 decision was null and void. Docket No. 94-2125 (Order Dismissing Appeal, issued June 14, 1995).

injury. He further found no objective findings on physical examination and opined that appellant was not disabled from her employment injury.

By decision dated April 30, 1996, the Office denied modification of its prior decision terminating appellant's compensation benefits.

By letter dated April 28, 1997, appellant, through her representative, again requested reconsideration of the Office's decision. In support of her request, appellant resubmitted work status reports dated August 28 and October 13, 1989 from Dr. Newman and a progress note dated December 9, 1993 from Dr. Newman. Appellant further argued that the doctrine of *res judicata* prevented the Office from revoking its acceptance of her claim.

By decision dated July 3, 1997, the Office found that the evidence appellant submitted in support of reconsideration was immaterial and insufficient to warrant review of its prior decision.

The Board finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

The only decision before the Board on this appeal is the Office's July 3, 1997 decision finding that the evidence submitted in support of appellant's request for reconsideration was not sufficient to warrant review of its prior decision. Since more than one year has elapsed between the date of the Office's most recent merit decision on April 30, 1996 and the filing of appellant's appeal on September 26, 1997, the Board lacks jurisdiction to review the merits of appellant's claim.[2]

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 or her 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."[3]

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

[2] 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.

[3] 20 C.F.R. § 10.138(b)(1).

this section will be denied by the Office without review of the merits of the claim.[4] Evidence that repeats or duplicates evidence already in the case record has no evidentiary values and does not constitute a basis for reopening a case.[5] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[6]

In support of her request for reconsideration, appellant submitted medical reports previously of record. Material which is duplicative of that already contained in the case record does not constitute a basis for reopening a case.[7]

Appellant further maintained that the doctrine of *res judicata* prevented the Office from terminating her compensation benefits. However, the principles of *res judicata* do not apply to the administration of the Act.[8] Section 8128(a) of the Act provides that 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 -- (1) end, decrease, or increase the compensation previously awarded…."[9] The Office is consequently entitled to reconsider, modify or reverse its prior decision where the evidence warrants such action.[10] Therefore, appellant has not raised a legal argument sufficient to require reopening of the case for merit review.

As appellant has not established that the Office erroneously applied or interpreted a point of law, advanced a point of law or fact not previously considered by the Office or submitted relevant and pertinent evidence not previously considered by the Office, she has not established that the Office abused its discretion in denying her request for review under section 8128 of the Act.

[4] *See* 20 C.F.R. § 10.138(b)(2).

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

[6] *Id.*

[7] *See Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

[8] *See Howard E. Johnston*, 40 ECAB 777 (1989).

[9] 5 U.S.C. § 8218.

[10] *See also* 20 C.F.R. § 10.138(a) which provides that "[u]nder the discretionary authority granted by 5 U.S.C. § 8128(a) the Office may review an award for or against the payment of compensation at any time on its own motion, and may, as a result of that review, affirm, reverse or modify the previous decision…"

The decision of the Office of Workers' Compensation Programs dated July 3, 1997 is hereby affirmed.

Dated, Washington, D.C.
July 21, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member