U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES SNEDDEN, JR. and DEPARTMENT OF DEFENSE, NEWARK AIR FORCE BASE, Ohio

Docket No. 97-1022; Submitted on the Record;
Issued March 4, 1999

DECISION and ORDER

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

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

This is the second appeal in the present case. In the prior appeal, the Board issued a decision and order[1] on April 24, 1995 in which it affirmed the July 13, 1993 decision of the Office on the grounds that appellant did not submit sufficient medical evidence to establish that he had residuals of his employment injury, chemical allergic reaction, after December 20, 1990. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

The only decision before the Board on this appeal is the Office's December 17, 1996 decision denying appellant's request for a review on the merits of the last merit decision. Because more than one year has elapsed between the issuance of the last merit decision and January 21, 1997, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the last merit decision.[2]

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[1] Docket No. 93-2414.

[2] *See* 20 C.F.R. § 501.3(d)(2).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[3] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.[4] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[5] When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[6]

In support of his reconsideration, appellant submitted various documents, including letters regarding his congressman's involvement in his claim. Appellant did not submit any medical evidence in support of his reconsideration request; the evidence he submitted is not relevant to the main issue of the present case, *i.e.*, whether he submitted sufficient medical evidence to establish that he had residuals of his employment injury, chemical allergic reaction, after December 20, 1990.[7] The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[8]

In the present case, appellant has not established that the Office abused its discretion in its December 17, 1996 decision by denying his request for a review on the merits of his claim under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, that he advanced a point of law or a fact not previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office.

[3] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

[4] 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

[5] 20 C.F.R. § 10.138(b)(2). The record contains a copy of a reconsideration request dated March 14, 1996 which was stamped as received in September 1996. However, the record also contains a mail receipt which shows that the March 14, 1996 letter was mailed to the Office in March 1996. Therefore, the Office properly determined that appellant's reconsideration request was timely.

[6] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

[7] Appellant indicated that he was submitting additional medical evidence, but the record does not contain any such evidence.

[8] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decision of the Office of Workers' Compensation Programs dated December 17, 1996 is affirmed.

Dated, Washington, D.C.
March 4, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member