U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAMUEL BERRY, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Greensboro, N.C.

Docket No. 97-1929; Submitted on the Record;
Issued March 17, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

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 has duly reviewed the case record in the present appeal and 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.

The only decision before the Board on this appeal is the Office's March 11, 1997 decision denying appellant's application for a review on the merits of its February 2, 1996 decision.[1] Because more than one year has elapsed between the issuance of the hearing representative's February 2, 1996 merit decision and May 9, 1997, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the February 2, 1996 decision.[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 application for review

[1] By decision dated February 2, 1996, the hearing representative denied modification of the Office's December 28, 1994 decision denying appellant's claim for chemical exposure injury.

[2] *See* 20 C.F.R. § 501.3(d)(2).

[3] 5 U.S.C. §§ 8101-8193.

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

within one year of the date of that decision.[5] When a claimant fails to meet one of the above-mentioned 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] Evidence that repeats or duplicates evidence already in the case record has no new evidentiary value and does not constitute a basis for reopening a case.[7] Evidence that does not address the particular issue involved also constitutes no basis for reopening a case.[8]

By letter dated February 2, 1997, appellant requested reconsideration of the February 2, 1996 decision. In support of the request appellant referenced and resubmitted prior written statements, a leave and absence analysis, an American Postal Workers' Union (APWU) safety questionnaire, PS Form 1767 accident log for 1994 to 1995, statements from coworkers, APWU memoranda, correspondence from Occupational Safety and Health Administration (OSHA), and correspondence from Duke University Medical Center Division of Occupational Safety and Health. As these reports were previously of record and considered by the hearing representative, their resubmission was duplicative, did not constitute the submission of new and relevant evidence not previously considered, and therefore did not constitute a basis for reopening appellant's claim for further consideration on its merits. Appellant also submitted medical treatment notes not previously considered dated December 14 and 28, 1994, and January 10, March 23, April 6 and 25, and August 2, 1995. The new medical evidence merely reports appellant's complaints and treatment. None of it provides an opinion as to the cause of appellant's complaints or discusses a causal relationship with any specific factors of appellant's federal employment. As the issue in this case is causal relationship of appellant's complaints with factors of his employment, medical records which provide no reference to the cause of the reported complaints are irrelevant to the issue and therefore provide no basis for reopening a claim for merit review. Consequently, appellant has not presented relevant and pertinent evidence not previously considered by the Office.

In the present case, appellant has not established that the Office abused its discretion in its March 11, 1997 decision by denying his request for a review on the merits of its February 2, 1996 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, failed to advance a point of law or a fact not previously considered by the Office or failed to submit relevant and pertinent evidence not previously considered by the Office.

As the only limitation on the Office's authority is reasonableness, an abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of

[5] 20 C.F.R. § 10.138(b)(2).

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

[7] *Mary G. Allen*, 40 ECAB 190 (1988); *Eugene F. Butler*, 36 ECAB 393 (1984).

[8] *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

judgment, or actions taken which are contrary to both logic and probable deductions from established facts.[9] Appellant has made no such showing here.

Consequently, the decision of the Office of Workers' Compensation Programs dated March 11, 1997 is hereby affirmed.

Dated, Washington, D.C.
March 17, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

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