U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TRINETTE ALLEN and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, Ill.

Docket No. 97-1934; Submitted on the Record;
Issued May 25, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.[1] As appellant filed her request for appeal on May 15, 1997, the only decision before the Board is the February 12, 1997 nonmerit decision denying appellant's application for review. The Board has no jurisdiction to review the most recent merit decisions of record, the August 31, 1995 decision, in which the Office denied appellant's claim because the evidence submitted was not sufficient to establish a causal relationship between appellant's accepted work injury of October 12, 1981 and her current back condition and left thigh pain, and the March 7, 1996 decision, in which the Office found that the evidence submitted was insufficient to warrant modification of the prior decision.

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

Section 8128(a) does not require the Office to review final decisions of the Office awarding or denying compensation. This section vests the Office with the discretionary authority to determine whether it will review a claim following the issuance of a final decision by the Office.[2] Although it is a matter of discretion on the part of the Office of whether to

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[1] 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[2] *Gregory Griffin*, 41 ECAB 186 (1989).

reopen a case for further consideration under 5 U.S.C. § 8128(a),[3] the Office, through regulations, has placed limitations on the exercise of that discretion with respect to a claimant's request for reconsideration. By these regulations, the Office has stated that it will reopen a claimant's case and review the case on its merits whenever the claimant's application for review meets the specific requirements set forth in sections 10.138(b)(1) and 10.138(b)(2) of Title 20 of the Code of Federal Regulations.

To require the Office to reopen a case for reconsideration, section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides in relevant part that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and specific issue(s) within the decision which the 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
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> "(ii) Advancing a point of law or fact not previously considered by the Office; or
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> "(iii) Submitting relevant and pertinent evidence not previously considered by the Office."[4]

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.[5]

Evidence which does not address the particular issue involved,[6] or evidence which is repetitive or cumulative of that already in the record,[7] does not constitute a basis for reopening a case. However, the Board has held that the requirement for reopening a claim for a merit review does not include the requirement that a claimant must submit all evidence which may be necessary to discharge his or her burden of proof. Instead, the requirement 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.[8]

In her November 7, 1996 reconsideration request, appellant submitted a, CA-2, notice of occupational disease and claim for compensation. She also submitted treatment records from Humana Health Plans for the period of January and February 1995. The notes do not contain information sufficient to establish that a back condition resulted from the October 12, 1981 traumatic injury. Although the notes relate a history of left thigh pain, there was no discussion

[3] *See Charles E. White*, 24 ECAB 85 (1972).

[4] 20 C.F.R. § 10.138(b)(1).

[5] 20 C.F.R. § 10.138(b)(2).

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

[7] *Eugene F. Butler*, 36 ECAB 393 (1984).

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

presented regarding the relationship to the original injury of October 12, 1981 or any residual thereof. Appellant has indicated on the CA-2 form that she had hoped her spinal ruptures could have been handled as part of the original claim. As appellant is relating her spinal ruptures to her automobile accident of October 12, 1981, the filing of a CA-2 form is immaterial to this case. The Board notes that the denial of this claim is based on the lack of medical evidence offering a rationalized medical opinion on how and why appellant's back condition is related to an injury which occurred more than 14 years earlier. None of the physician's of record have offered this type of evidence.

The Board finds that none of the evidence submitted or arguments made constitute a basis for reopening appellant's claim for further merit consideration. Accordingly, the Office did not abuse its discretion by refusing to reconsider appellant's claim on its merits in its February 12, 1997 decision.

Consequently, the decision of the Office of Workers' Compensation Programs dated February 12, 1997 is affirmed.

Dated, Washington, D.C.
May 25, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member