U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN M. LOCKHART and U.S. POSTAL SERVICE, POST OFFICE, Charlotte, NC

Docket No. 98-2612; Submitted on the Record;
Issued August 18, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, A. PETER KANJORSKI

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

The Office accepted appellant's claim for carpal tunnel syndrome to the right wrist.

By letter dated November 11, 1994, appellant's treating physician, Dr. James E. Weilbacher, a Board-certified orthopedic surgeon, stated that he was unable to provide an opinion on appellant's condition.

In a report dated December 28, 1994, the referral physician, Dr. James H. Lipsey, a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination and reviewed x-rays. He diagnosed probable carpal tunnel syndrome bilaterally, with appropriate surgery. Dr. Lipsey found no objective physical findings, no evidence of ongoing physical disability, and characterized her description of her disability as "bizarre." He opined that appellant could perform her usual work.

By decision dated June 20, 1995, the Office terminated benefits effective June 25, 1995, stating that appellant's disability related to work factors ceased on that date.

Appellant requested an oral hearing before an Office hearing representative which was held on May 20, 1996. At the hearing, appellant stated that she had been compensated for a 20 percent impairment to her left hand and returned to work. Appellant's legal representative, Bill Rice, stated that appellant received verbal abuse from management, was offered a job that was not within her restrictions, and was issued a letter of removal for being absent without leave and not returning to work. Mr. Rice stated that appellant had filed a grievance. He reiterated that appellant's injury and work were related. Mr. Rice contended that appellant's surgery consisting of carpal tunnel release failed. He stated that appellant received a 20 percent impairment rating for her right hand but could not collect it because she was receiving workers' compensation.

Mr. Rice claimed that Dr. Lipsey did not know "what he was talking about," in part because he did not note appellant had received a 20 percent impairment rating for both hands. He stated that appellant still suffered pain in her wrists despite the surgery, that she had not worked for a year and a half, and could not perform her usual work. Appellant stated that she could not function well and was unable to do household chores such as cooking or laundry and could not wash her hair. Appellant's husband who was present with her during the examination by Dr. Lipsey stated that the examination was "about" less than 10 minutes, Dr. Lipsey took appellant hands, touched them with a tongue depressor and took no x-rays.

In a report dated March 19, 1996, appellant's treating physician, Dr. Daniel T. Eglinton, a Board-certified orthopedic surgeon, opined that appellant continued to suffer pain after her carpal tunnel release due to her carpal tunnel problem. He stated that there might be varying opinions as to the etiology of her continuation of pain and limited function, but she nonetheless required restrictions.

By decision dated July 29, 1996, the Office hearing representative affirmed the Office's July 29, 1996 decision.

In an undated letter received by the Office on March 5, 1997, appellant requested reconsideration of the Office's decision. Appellant submitted medical reports from Dr. Bruce I. Minkin, a Board-certified orthopedic surgeon, and Dr. Paul C. Perlik, a Board-certified orthopedic surgeon, and stated that the conflict in opinion between appellant's treating physician and Dr. Lipsey could have been resolved by referring appellant to an impartial medical specialist. She also requested that the schedule award which the Office previously denied her be granted. Further, appellant contended that she should have been referred to a Board-certified psychiatrist based on Dr. Lipsey's statement that her description of her disability was "bizarre." She requested that she be compensated from June 25, 1995 until she was returned to work within her restrictions.

Appellant submitted additional medical reports and some personal statements explaining how the medical evidence supported her claim. In his September 9, 1996 report, Dr. Minkin diagnosed possible chronic radial nerve compression at the supinator of both arms which was worse on the right and possible palmar cutaneous branch median nerve neuroma or trapping of nerve and scar. He opined that appellant could perform sedentary to very mild activity with a two-pound weight lifting limit in either hand and could not perform any repetitive wrist or finger activity.

In his February 6, 1997 report, Dr. Perlik diagnosed bilateral upper extremity pain and status post bilateral carpal tunnel release and de Quervain's release. He opined that she had recovered from her January 17, 1990 employment injury and her symptoms outweighed her objective findings. Dr. Perlik stated that appellant could perform modified work with restrictions, and her limitations were related to the employment injury.

By decision dated May 7, 1997, the Office denied appellant's request for modification.

By letter dated May 4, 1998, appellant requested reconsideration of the Office's decision. Appellant contended that Dr. Lipsey's opinion was the only medical opinion in the record which

stated that appellant could work and Dr. Lipsey was "totally incompetent" and was not allowed to practice in the local hospital. She also cited excerpts from Dr. Perlik's and Dr. Minkin's opinions in support of her claim. Further, appellant emphasized that the scar on her right hand was from the surgery and was work related. She also stated that Dr. Lipsey's opinion that she had recovered was inconsistent with her receiving a schedule award for her arm and hand. Appellant reiterated that she wanted to be compensated since June 25, 1995 until employer provided her with work within her restrictions.

By decision dated August 11, 1998, the Office denied appellant's request for reconsideration.

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

Since more than one year had elapsed from the date of the Office's May 7, 1997 decision, to the filing of appellant's appeal on August 26, 1998, the Board lacks jurisdiction to review that decision.[1] The only decision before the Board on this appeal is the Office's August 11, 1998 decision, denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[2] 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.[3] Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.[4] 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.[5] Evidence that does not address the particular issue involved, in the present case whether the Office was justified in terminating her benefits, does not constitute a basis for reopening the case.[6]

In the present case, in her request for reconsideration, appellant emphasized that Dr. Perlik's and Dr. Minkin's opinions that she could work with restrictions constituted the weight of the evidence. She also stated that Dr. Lipsey's opinion was not entitled to any weight in part because he was not permitted to practice in the local hospital and because he did not consider the significance of appellant's receiving a schedule award for her hand and arm

[1] *See Michael A. Gnoth*, 41 ECAB 988, 991 (1990); 20 C.F. R. § 10.138(b)(2).

[2] 5 U.S.C. § 8181 *et seq.*

[3] 20 C.F.R. § 10.138(b)(1) and (2).

[4] 20 C.F.R. § 10.138(b)(2).

[5] *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

[6] *Richard L. Ballard, supra* note 5; *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

condition. Appellant, however, previously made the legal argument that Dr. Lipsey's opinion was not probative and did not submit any new evidence to support her argument. Appellant therefore did not show that the Office erroneously applied or misinterpreted a rule of law, did not advance a point of law or fact not previously considered by the Office or submit relevant and pertinent evidence not previously considered by the Office. Appellant has, therefore, not established that the Office abused its discretion in its August 11, 1998 decision, by denying appellant's request for a review on the merits of its May 7, 1997 decision.

The decision of the Office of Workers' Compensation Programs dated August 11, 1998 is hereby affirmed.

Dated, Washington, D.C.
August 18, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member