U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERNET P. BOONE and NATIONAL AERONAUTICS & SPACE ADMINISTRATION, LANGLEY RESEARCH CENTER, Hampton, VA

Docket No. 99-1780; Submitted on the Record;
Issued December 8, 2000

DECISION and ORDER

Before DAVID S. GERSON, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

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 her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board finds that the Office acted within its discretion in refusing to reopen appellant's case for further consideration of the merits of her claim.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[1] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.[2] 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.[3] 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.[4]

In February 1997 appellant, then a 39-year-old electrical engineering technician, filed an occupational disease claim alleging that she sustained an emotional condition due to various employment factors, including verbal harassment from supervisors and coworkers; discrimination based on her race, sex and grievance history; mishandling of her performance

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[1] 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 her own motion or on application." 5 U.S.C. § 8128(a).

[2] 20 C.F.R. § 10.606(b)(2).

[3] 20 C.F.R. § 10.607(a).

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

evaluation, job transfer and promotion procedures; failure to provide adequate training; and lack of enforcement of the employing establishment's no smoking policy.

By decision dated August 20, 1997, the Office denied appellant's claim on the grounds that she did not sustain an injury in the performance of duty as she did not establish any compensable employment factors. By decision dated May 4, 1998 and finalized May 5, 1998, an Office hearing representative affirmed the Office's August 20, 1997 decision.

The only decision before the Board on this appeal is the Office's February 11, 1999 decision denying appellant's request for a review on the merits of its May 5, 1998 decision. Because more than one year has elapsed between the issuance of the Office's May 4, 1998, decision finalized on May 5, 1998 and May 10, 1999, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the May 5, 1998 decision.[5]

In support of her September 23, 1998 reconsideration request, appellant submitted a statement in which she described various alleged employment factors, including allegations concerning verbal harassment, discrimination, and the mishandling of matters relating to smoking policy, performance evaluation, training, promotion and job transfer. However, appellant's description of these alleged employment factors is essentially similar to that already provided; the Office has already considered and rejected these arguments regarding appellant's claimed employment factors.[6] The Board has held that the submission of evidence or argument, which repeats or duplicates evidence already in the case record, does not constitute a basis for reopening a case.[7]

Appellant submitted numerous documents concerning grievances she filed regarding her claimed employment factors, including claims filed with the Equal Employment Opportunity Commission (EEOC).[8] However, most of these documents had already been submitted and considered by the Office; the remaining documents are essentially similar to those already submitted. Moreover, the records do not contain any information or holdings, relevant to the main issue in this case, *i.e.*, whether appellant sustained an injury in the performance of duty by the submission of sufficient evidence to establish any compensable employment factors.[9] Appellant also submitted statements of employing establishment officials, which appear to have been produced in connection with her EEO complaint. Although these statements had not previously been submitted, they are essentially similar to statements of employing establishment officials, which had already been submitted and considered by the Office. Moreover, the

[5] *See* 20 C.F.R. § 501.3(d)(2).

[6] Appellant also submitted photographs of ashtrays filled with cigarette butts and ash. However, the Office had already considered and rejected appellant's claim that the employing establishment's handling of the no smoking policy constituted an employment factor.

[7] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

[8] These documents included various performance evaluations and a "report of investigation" which appellant obtained from a private party.

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

statements do not contain any information, relevant to appellant's allegation regarding her claimed employment factors.[10]

Appellant has not established that the Office abused its discretion in its February 11, 1999 decision by denying her request for a review on the merits of its May 5, 1998 decisions under section 8128(a) of the Act, because she did not to show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office.

The decision of the Office of Workers' Compensation Programs dated February 11, 1999 is affirmed.

Dated, Washington, DC
December 8, 2000

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

[10] Appellant also submitted a March 11, 1998 report in which an attending physician detailed her emotional condition. However, this medical evidence is not relevant to the main issue of this case, which is essentially factual.