U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANNE DELANEY and DEPARTMENT OF VETERANS AFFAIRS, VETERANS AFFAIRS MEDICAL CENTER, Memphis, TN

Docket No. 99-210; Submitted on the Record;
Issued July 12, 2000

DECISION and ORDER

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

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

On April 18, 1995 appellant, then a 38-year-old medical clerk, filed a claim for an emotional condition in the performance of duty. In a statement accompanying her claim, appellant attributed her condition primarily to an incident occurring on January 31, 1995 when a coworker, Elizabeth A. Cox, with whom she shared an office had a confrontation with an employing establishment physician, Dr. Murray, regarding her emotional stability. Appellant related that in November and December 1994 Ms. Cox had been depressed and had discussed committing suicide. Appellant stated that on January 31, 1995 Ms. Cox indicated to Dr. Murray that Dr. Sarah Carter, a physician with the employing establishment who had failed to find her disabled from employment, "needed to have something done to her [and] Dr. Murray stated he was going to have her committed." Appellant related that Ms. Cox then left the office for the day.

By decision dated September 25, 1995, the Office denied appellant's claim on the grounds that she did not establish an injury in the performance of duty. The Office found that appellant's fear of violence from Ms. Cox was self-generated and did not constitute a compensable factor of employment. In a letter dated October 11, 1995, appellant requested a hearing before an Office hearing representative. By decision dated May 9, 1997 and finalized May 12, 1997, the hearing representative affirmed the Office's September 25, 1995 decision.[1] Appellant, through her representative, requested reconsideration by letter dated May 8, 1998. In a decision dated July 1, 1998, the Office denied appellant's request for reconsideration on the

[1] Appellant appealed her case to the Board; however, she subsequently requested that the Board dismiss her appeal so that she could request reconsideration before the Office. The Board dismissed the appeal on September 26, 1997. Docket No. 97-2584 (Order Dismissing Appeal, issued September 26, 1997).

grounds that the evidence submitted was repetitious and cumulative and, therefore, insufficient to warrant review of the prior decision.

The Board finds that the Office did not abuse its discretion in denying review of the merits of appellant's claim under section 8128.

The only decision over which the Board has jurisdiction is the Office's July 1, 1998 decision denying appellant's request for a review of the merits of the case. Because more than one year has elapsed between the issuance of the Office's decision dated and finalized May 12, 1997 and September 29, 1998, the date appellant filed her appeal before the Board, the Board lacks jurisdiction to review the decision finalized May 12, 1997.[2]

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and the specific issue(s) within the decision, which 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

"(ii) Advancing a point of law or fact not previously considered by the Office, or

"(iii) Submitting relevant and pertinent evidence not previously considered by the Office."[3]

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.[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 also does not constitute a basis for reopening a case.[6]

In support of her request for reconsideration, appellant's attorney argued that the Office erred in failing to find that appellant had submitted sufficient evidence to establish that she feared for her safety from Ms. Cox. He cited a letter dated February 7, 1995 from appellant to an employing establishment physician, which he alleged showed appellant's concern about her safety. However, the Office previously considered and rejected appellant's argument. The hearing representative discussed the February 7, 1995 letter and noted that appellant "clearly did

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

[3] 20 C.F.R. § 10.138(b)(1).

[4] *See* 20 C.F.R. § 10.138(b)(2).

[5] *Daniel Deparini*, 44 ECAB 657 (1993).

[6] *Id.*

not express her concern that Ms. Cox would harm her…." Thus, as the Office previously considered this argument, it does not constitute a basis for reopening appellant's case for merit review under 20 C.F.R. § 10.138.[7]

Appellant's representative further reviewed the evidence and reiterated what he regarded as the strengths of her claim. However, appellant's contentions are repetitious and substantially similar to those previously raised before the Office. Appellant, therefore, has not raised a legal argument sufficient to require reopening of the case for merit review.

Appellant's representative further contended that the employing establishment erred in placing appellant, who had just returned to work after an absence for an employment-related emotional condition, with Ms. Cox, who was known to be unstable. However, there is no evidence of record, which would show that the action taken by the employing establishment in placing appellant with Ms. Cox constituted error or abuse. Appellant's new allegation, therefore, does not have sufficient legal basis to require a further merit review of her claim for an emotional condition.[8]

The record further contains newly submitted chart notes dated October 1994 to November 1996 from Dr. L.D. Hutt, a clinical psychologist and appellant's attending physician. As the question in the instant case is whether appellant has alleged a compensable factor of employment, which is factual in nature, the medical evidence is not pertinent to the issue at hand. Further, the February 7, 1995 chart note in which Dr. Hutt discussed the January 31, 1995 incident is substantially similar to a report of the same date from Dr. Hutt which was previously of record and considered by the Office.

As abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.[9] Appellant has made no such showing here and thus the Board finds that the Office properly denied her application for reconsideration of her claim.

[7] *Richard L. Ballard*, 44 ECAB 146 (1992).

[8] Additionally, appellant questioned at the hearing why she was put with Ms. Cox in light of both of Ms. Cox's emotional problems including prior suicide attempts problems and thus she had already advanced this argument to the Office.

[9] *Rebel L. Cantrell*, 44 ECAB 660 (1993).

The decision of the Office of Workers' Compensation Programs dated July 1, 1998 is hereby affirmed.

Dated, Washington, D.C.
July 12, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member