U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEAN A. RODRIGUEZ and U.S. POSTAL SERVICE,
POST OFFICE, Albuquerque, NM

Docket No. 99-1542; Submitted on the Record;
Issued July 27, 2000

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

On February 6, 1993 appellant, then a 31-year-old letter carrier, injured his middle and lower back when he slipped from a curb while carrying a heavy parcel. He filed a claim for benefits on February 9, 1993, which the Office accepted for thoracic and low back strain. Appellant was paid compensation by the Office for appropriate periods.

In a work restriction evaluation dated January 8, 1996, appellant's treating physician, Dr. Thomas G. Cohn, Board-certified in physical medicine and rehabilitation, released appellant to return to work with restrictions. He indicated that appellant should perform no bending, squatting, climbing, kneeling, twisting and standing. In a January 11, 1996 report, Dr. Cohn stated that appellant could return to work for four hours per day in a light-duty job that involved no significant bending or lifting.

An Office memorandum of teleconference dated February 8, 1996 indicates that appellant accepted a light-duty job as a modified letter carrier, which the employing establishment deemed to be within Dr. Cohn's restrictions and stated that appellant agreed to return to work on February 12, 1996. A copy of the modified clerk job offer, dated March 4, 1996, indicates that appellant would be totally restricted from bending, stooping and twisting.

In a memorandum of telephone conference dated February 20, 1996, appellant called the Office and questioned whether proper procedures had been followed in regard to his being offered a job and returning to work. He specifically questioned whether the job offer was required to be made in writing, whether he was entitled to have 30 days to accept it and whether he was entitled to representation at the conference. The Office responded that once an injured

employee is able to resume some form of work he is required to seek employment and that no procedures under the Federal Employees' Compensation Act had been violated.

On June 10, 1996 appellant filed a claim for recurrence of disability, claiming that he was experiencing pain in his back and right leg caused or aggravated by his February 6, 1993 employment injury. He claimed that his daily work hours were reduced to three due to excessive standing and stooping.

By decision dated September 6, 1996, the Office denied appellant's claim for recurrence of disability, finding that he did not submit evidence sufficient to establish that the claimed conditions were causally related to the February 6, 1993 employment injury.

By letter dated September 9, 1996, appellant requested an oral hearing, which was held on October 20, 1996.

By decision dated December 1, 1997, an Office hearing representative affirmed the Office's September 9, 1996 decision.

By letter dated April 3, 1998, appellant's attorney requested reconsideration. In support of his claim, appellant's attorney contended that the Office hearing representative committed an error of law by: failing to consider appellant's argument that the Office committed procedural errors by not providing appellant with adequate notice of the February 8, 1996 telephonic conference; finding that appellant had agreed to accept permanent light-duty employment, when in fact he was misled into believing that his treating physician had approved the position and that the Office had found the position to be suitable; and by neglecting to consider the Office's error in finding the light-duty job suitable when it entailed limited stooping and bending, which violated the treating physician's specific restrictions. Appellant did not submit any additional medical evidence with his request.

By decision dated June 5, 1998, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

By letter dated October 5, 1998, appellant's attorney requested reconsideration. He essentially reiterated the legal argument he raised previously and did not submit any additional medical evidence.

By decision dated January 6, 1999, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his cervical condition claim under 5 U.S.C. § 8128(a).

Pursuant to 20 C.F.R. § 10.138(b)(1) in effect on June 5, 1998 and 20 C.F.R. § 10.606 in effect on January 6, 1999, a claimant may obtain review of the merits of his or her claim by

showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent new evidence not previously considered by the Office.[1] Formerly at section 10.138(b)(2), section 10.608(a) 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.[2] 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.[3]

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced relevant legal argument not previously considered by the Office; and he has not submitted relevant and pertinent new evidence not previously considered by the Office. All of the medical evidence submitted by appellant was previously of record and considered by the Office in reaching prior decisions. Thus, his request did not contain any new and relevant medical evidence for the Office to review. This is important since the outstanding issue in the case -- whether appellant sustained a recurrence of his accepted February 6, 1993 employment injury on June 10, 1996 -- is medical in nature. Additionally, the argument appellant's attorney presented in his April 3 and October 5, 1998 requests for reconsideration did not show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Although appellant's attorney generally contended that the Office failed to follow proper procedures in offering appellant light-duty employment, the record indicates that appellant voluntarily agreed to participate in the February 8, 1996 teleconference at which he voluntarily agreed to accept the employing establishment's offer and return to work. As there was no conflict between appellant and the employing establishment regarding his willingness and ability to perform the light-duty job, the Office was not authorized to become actively involved in the reemployment process, except in its advisory capacity. Further, the statement by appellant's attorney that appellant's light-duty job involved bending and stooping, contrary to Dr. Cohn's restrictions and without appellant's prior acknowledgement, is contradicted by the March 4, 1996 copy of the modified clerk job offer which specifically stated that appellant would be totally restricted from bending, stooping and twisting.

Accordingly, appellant failed to submit new and relevant medical evidence in support of his request for reconsideration and did not show the Office erroneously applied or interpreted a point of law. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

[1] 20 C.F.R. § 10.606(b)(2) (1999); *see generally* 5 U.S.C. § 8128(a).

[2] 20 C.F.R. § 10.608(a) (1999).

[3] *Howard A. Williams*, 45 ECAB 853 (1994).

The decisions of the Office of Workers' Compensation Programs dated June 5, 1998 and February 19, 1999 are hereby affirmed.

Dated, Washington, D.C.
July 27, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member