U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUCINO G. DIZON and DEPARTMENT OF THE AIR FORCE, CLARK AIR FORCE BASE, Philippines

Docket No. 99-1004; Submitted on the Record;
Issued June 14, 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 abused its discretion by refusing to reopen appellant's claim for further merit review under 5 U.S.C. § 8128(a).

On December 3, 1980 appellant, then a 43-year-old routeman, filed a notice of occupational disease (Form CA-2) and claim for compensation (Form CA-4) alleging that he contracted pulmonary tuberculosis due to factors of his federal employment. By decision dated April 16, 1985, the Office denied appellant's claim on the grounds that the weight of the medical evidence failed to establish that his condition was causally related to factors of his federal employment. By letter dated June 22, 1993, appellant requested reconsideration of his claim. By letter dated February 7, 1994, appellant again requested reconsideration of his claim. By letter dated June 10, 1994, the Office informed appellant that a decision regarding his claim had been rendered. By letter dated July 12, 1994, appellant again requested reconsideration of the Office's April 16, 1985 decision denying his claim. By decision dated October 23, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted to support his request was irrelevant and insufficient to warrant further review. By letter dated January 12, 1998, appellant requested reconsideration of the Office's October 23, 1997 decision. By decision dated November 24, 1998, the Office denied appellant's request on the grounds that it was not supported by new and relevant evidence or a legal argument not previously considered by the Office.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further merit review under 5 U.S.C. § 8128(a).[1]

[1] The Board's jurisdiction to consider and decide appeals from final Office decisions extends only to those decisions issued within one year of the filing of the appeal. Therefore, the Board lacks jurisdiction to review the Office's April 16, 1985 and October 23, 1997 decisions, as more than one year past between those decisions and January 4, 1999, the date appellant's appeal was filed. 20 C.F.R. §§ 501.2(c), 501.3(d)(2); *see also Donald J.*

An employee seeking benefits under the Act[2] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation established in the Act, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.[3]

To warrant a grant of a claimant's request for further merit review of his case, the claimant must show that the Office erroneously applied or interpreted a point of law, advance a new legal argument not previously considered by the Office, or submit new and relevant evidence not previously considered by the Office.[4] Where such evidence and arguments are present, it is well established under Board precedent that the Office must reopen a case for further merit review.[5] Section 10.138(b)(2) of the Office's regulations provides that when an application for review of the merits of a claim does not meet at least one of those requirements, the Office will deny the application for review without reviewing the merits of the claim.[6] The submission of evidence or argument which repeats or duplicates evidence or argument previously submitted and considered by the Office does not constitute a basis for reopening a case for further review on the merits.[7] Evidence failing to address the particular issue involved also does not constitute a basis for reopening a case.[8]

In the present case, the Office properly found that appellant's January 12, 1998 request for reconsideration did not warrant further merit review of his claim. Appellant's request was not supported by new and relevant evidence not previously considered by the Office, nor did it show that the Office erroneously applied or interpreted a point of law or advance a new legal argument. Appellant's request merely stated his belief that he is entitled to compensation benefits, and it was not accompanied by factual or medical evidence in support of his claim.

Miletta, 34 ECAB 1822 (1983); *Jeanette Butler*, 47 ECAB 128 (1995).

[2] 5 U.S.C. §§ 8101-8193.

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Alton L. Vann*, 48 ECAB 259, 269 (1996); 20 C.F.R. § 10.138(b)(1).

[5] *Helen E. Tschantz*, 39 ECAB 1382, 1385 (1988).

[6] 20 C.F.R. § 10.138(b)(2).

[7] *David E. Newman*, 48 ECAB 305, 308 (1997)*; see Eugene F. Butler*, 36 ECAB 393, 398 (1984).

[8] *Barbara A. Weber*, 47 ECAB 163, 165 (1995).

The decision of the Office of Workers' Compensation Programs dated November 24, 1998 is affirmed.

Dated, Washington, D.C.
June 14, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member