U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LONNIE C. ASHWORTH and U.S. POSTAL SERVICE,
POST OFFICE, Atlanta, GA

Docket No. 99-381; Submitted on the Record;
Issued May 23, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On December 29, 1986 appellant, then a 43-year-old mailhandler, filed a traumatic injury claim alleging that he was struck in the head by a mail sack thrown by a fellow employee. On July 26, 1989 he filed a second traumatic injury claim alleging that he was struck in the head, over his eye, by a loaded mail container that was being pushed by a coworker. Appellant was treated for bruises and swelling by the employing establishment's contract health provider on both December 29, 1986 and July 26, 1989. Because he did not miss any time from work and no medical expenses were incurred, the employing establishment did not forward either of appellant's CA-1 claim forms to the Office.[1]

On May 27, 1992 and again on June 15, 1992, appellant filed a claim alleging that he sustained a recurrence of disability beginning November 17, 1990. He alleged that he suffered from headaches and dizziness and a depressive condition related to his work injuries.

The Office first received the initial CA-1 claims for injury after appellant filed his notices of recurrence of disability. The Office combined the claims for adjudication and advised appellant of his burden to submit supporting factual and medical evidence.

In support of his claim, appellant submitted an October 28, 1992 report by Dr. J.E. McDaniel, a Board-certified neurologist, who first examined appellant on April 10, 1992. He diagnosed musculoskeletal headaches possibly related to depression and postconcussive syndrome. Dr. McDaniel noted, however, that it was "unusual for postconcussive syndrome to last this long."

In a report dated November 25, 1992, by Dr. Randi Most, a clinical psychologist, noted that appellant suffered from chonic pain and social withdrawal. He diagnosed that appellant was

[1] The record indicates that appellant was also involved in a nonwork-related car accident in 1968. As a result of that car accident, he sustained a skull fracture, was blinded in the right eye and had multiple leg fractures.

mildly depressed and that there "may be an organic component to the impairment." Dr. Most also noted that appellant suffered from several head injuries and concussions that "may have made him more neurologically fragile."

In a decision dated August 11, 1993, the Office determined that on December 29, 1986 and July 26, 1989 appellant sustained head contusions while in the performance of duty. The Office, however, denied appellant's claim for a recurrence on the grounds that his medical evidence was insufficient to establish that his claimed condition of headaches and depression was causally related to the original work injury or injuries.

Appellant requested a hearing on August 17, 1993.

In a December 24, 1994 decision, an Office hearing representative affirmed the Office's August 11, 1993 decision.

Appellant filed a request for reconsideration, which was denied by the Office on February 5, 1996 following a merit review of the record.[2]

In a letter dated June 17, 1996, appellant again requested reconsideration and submitted a May 8, 1996 report by Dr. John D. Mallory, a Board-certified psychologist. He noted that appellant began to have headaches and blackouts following his 1968 car accident which totally resolved and then began again following appellant's work injury on December 29, 1986 and July 26, 1989. Dr. Mallory diagnosed post-traumatic headaches with secondary anxiety manifested by hyperventilation and syncopal spells. He further noted that appellant's ongoing symptoms were equally classified under the heading of neurological and psychiatric and were attributable to appellant's work injuries.

In a decision dated August 8, 1996, the Office denied modification following a merit review.

On July 1, 1997 appellant filed a request for reconsideration and submitted a May 12, 1997 report by Dr. Mark A. Kozinn, a Board-certified neurologist. He noted only that appellant was referred by Dr. Landy for treatment of post-traumatic headaches and blackouts due to a head injury on December 29, 1986.

In a merit decision dated July 21, 1997, the Office denied modification.

On July 6, 1998 appellant filed his fourth reconsideration request. In conjunction with that request, he submitted a report from Dr. Mallory dated August 29, 1997 and a hearing decision issued by the Social Security Administration dated January 10, 1996.

In an August 29, 1997 report, Dr. Mallory noted that appellant was involved in a serious car accident in 1968 and sustained head injuries at work on December 29, 1986 and July 26, 1989. He stated that "the accumulation of symptoms following all of the above

[2] Appellant submitted a December 20, 1995 report from Dr. Mallory diagnosing that appellant suffered from chronic anxiety and depression. He noted appellant's history of head traumas but not did explain the causal relationship between appellant's disability and each of the work and nonwork-related injuries.

mentioned injuries with headache, concentration, memory problems and impairment of [his] foot plus taking medication made it even harder to function," such that appellant had to quit work.

In a decision dated October 7, 1998, the Office denied appellant's request for reconsideration under section 8128.

The only decision before the Board on appeal is the Office's October 7, 1998 decision denying appellant's request for a merit review. Since more than one year elapsed between the date appellant filed his appeal on October 22, 1998 and the last merit decision issued by the Office on July 1, 1997, the Office does not have jurisdiction to consider the propriety of the Office's earlier decisions denying compensation.[3]

The Board finds that the Office properly denied appellant's request for a merit review under section 8128.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.[4] The regulations provide that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[5] 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.[6] 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.[7] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[8] Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.[9]

In the instant case, the report of Dr. Mallory dated August 29, 1997 was submitted by appellant in support of his recent reconsideration request. The Board finds his report to be cumulative and repetitive evidence, as he merely restates his opinion that appellant's symptoms are the accumulation of all of appellant's head injuries, work and nonwork related. Because

[3] 20 C.F.R. § 501.3(d) requires that an appeal must be filed within one year from the date of issuance of the final decision of the Office.

[4] 5 U.S.C. § 8128; *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[5] 20 C.F.R. § 10.138(b)(1).

[6] 20 C.F.R. § 10.138(b)(2).

[7] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[8] *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

[9] *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

Dr. Mallory's August 29, 1997 report merely repeats his opinion, the report does not constitute a basis for reopening the record.[10]

Additionally, although appellant submitted a copy of a social security decision finding him to be totally disabled, that decision has no relevance to these proceedings. The findings of other administrative agencies are not dispositive of proceedings under the Act, which is administered by the Office and the Board.[11]

Consequently, appellant has not established that the Office abused its discretion under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, he has not advanced a point of law or a fact not previously considered by the Office and he has not submitted relevant and pertinent evidence not previously considered by the Office.

Accordingly, the decision of the Office of Workers' Compensation Programs dated October 7, 1998 is hereby affirmed.

Dated, Washington, D.C.
May 23, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[10] *See Alton L Vann*, 48 ECAB 259 (1996); *Linda I. Sprague*, 48 ECAB 391 (1997).

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