U. S. DEPARTMENT OF LABOR

Employees Compensation Appeals Board

In the Matter of JOHN J. JULIANO and U.S. POSTAL SERVICE,
POST OFFICE, Boston, MA

Docket No. 99-658; Submitted on the Record;
Issued May 5, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether the refusal of the Office of Workers' Compensation Programs, in its July 6, 1998 decision, to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office in its July 6, 1998 decision to reopen appellant's case for further consideration of the merits of his claim did not constitute an abuse of discretion.

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 point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent 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 must also 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]

Appellant filed a notice of occupational disease and claim for compensation on July 11, 1997, alleging that on June 26, 1997 he suffered a heart attack while on duty as a postman. Appellant indicated that his assigned postal route consisted of several hills and that he worked

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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 his own motion or on application." 5 U.S.C. § 8128(a).

[2] 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

[3] 20 C.F.R. § 10.138(b)(2).

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

from 7:30 a.m. until 4:00 p.m. every day. Appellant further indicated that on June 26, 1997 the weather was hot and humid and upon completion of his route that day, appellant experienced light-headedness, a breakout of sweat, heart palpitations and tightness in his chest area. Appellant noted that he returned to the Office when his condition deteriorated and his supervisor took him to the hospital. Appellant has not since returned to work.

Appellant submitted with his CA-2 form a note from Dr. Hermon K. Gold, a Board-certified internist, dated June 30, 1997, which indicated that appellant was rushed to the hospital for substernal chest pressure, which occurred at the end of his route on June 27, 1997. Dr. Gold further indicated in his note that appellant underwent immediate cardiac catheterization. Appellant also submitted a statement that outlined the duties of his employment, his activities prior to the alleged incident and the circumstances leading to his condition.

On July 30, 1997 the Office advised appellant that his claim was insufficient to determine eligibility for benefits under the Act because the medical evidence lacked a reasoned opinion on the causal relationship of the diagnosed condition to factors of his employment. The Office requested a medical assessment of appellant's physical health at that time; the details of any previous cardiac symptoms and any previous diagnoses of coronary artery disease. The Office specifically requested medical opinion evidence from appellant's physician that provided a rationalized medical opinion explaining the causal relationship of the diagnosed condition to factors of appellant's employment. The Office allotted appellant 30 days with which to respond.

On August 4, 1997 appellant submitted a response to the Office regarding his present physical condition and indicated that he had never been diagnosed with coronary heart disease and had only been treated briefly for high blood pressure in 1983 when his father died. Appellant also submitted in response to the July 30, 1997 request medical reports dated June 26 and 27, 1997, taken while he was treated at Newton-Wellesley Hospital after the June 26, 1997 incident. The report by Dr. James Sidd, a Board-certified cardiologist, noted:

> "[T]his [appellant] clearly had a tiny myocardial infarction, which is probably so small that it is not truly worthy of the diagnosis of infarction, unless the third sample demonstrates a significantly higher CPK, but regardless, there was a small amount of necrosis. The major now is whether this patient, who has high risk for coronary disease has a critical lesion in his coronary arteries, and that he is really preinfarction, or whether he has insignificant coronary disease (20 [to] 30 percent lesions) and that the very rapid tachycardia tipped him into a tiny infarction…. His heart otherwise seems perfectly normal…."

Appellant submitted a hospital discharge report by Dr. Gold that noted the medical circumstances surrounding appellant's admission into the hospital and detailed the findings of the cardiac catheterization and electrocardiogram conducted during his hospital stay. The cardiac evaluation demonstrated normal coronary arteries. The electrocardiogram demonstrated "a supraventricular tachycardia at 236 beats per minute with an axis of -15 degrees, probable inverted p-waves in leads II and F and a rate related ST and T-wave changes." He further indicated in the report that "[I]t was thought that the patient had a supraventricular tachycardia due to either AVNRT or atrioventricular re-entry tachycardia with a concealed accessory AV connection or atrial tachycardia."

By decision dated December 4, 1997, the Office denied appellant's claim for compensation because none of the medical evidence submitted by appellant contained a reasoned opinion on the causal relationship between the incident on June 26, 1997 and factors of his employment.

On February 8, 1998 appellant requested reconsideration of the December 4, 1997 decision, alleging that there was medical evidence not previously considered during the Office's evaluation of his occupational disease claim. Appellant claimed that the additional evidence had not been solicited from Drs. Gold and Sidd because he assumed that the Office would request such information from his doctors directly. Appellant submitted, in support of his February 8, 1998 request, a note dated August 4, 1997 from Dr. Gold that indicated the dates that appellant was treated for myocardial infarction and supraventricular tachycardia and the June 30, 1997 note previously submitted by Dr. Gold and considered by the Office.

By decision dated July 6, 1998, the Office issued a compensation order denying appellant modification of the December 4, 1997 decision, upon review of the merits because the medical reports submitted by Dr. Gold were insufficient to warrant modification of the prior decision.

The only decision before the Board on appeal is the Office's July 6, 1998 decision, in which the Office denied appellant's application for review on the grounds that the evidence submitted was insufficient to warrant review and, as that is not a merit decision, the only issue before the Board is whether the Office abused its discretion in refusing to reopen his case for merit review under 5 U.S.C. § 8128(a).[5]

The advancement of appellant's arguments was not sufficient to require merit review of his claim. The argument by appellant that he believed the Office would request medical evidence from his doctors with his authorization and release form has no color of validity as the Office clearly stated in its July 30, 1997 request that it may correspond with appellant's physician, however, it is appellant's sole responsibility to provide sufficient evidence in support of his claim.

The relevant issue of the present case, which is essentially medical in nature, *i.e.*, whether the medical evidence shows that appellant's cardiac condition was causally related to his employment. The medical evidence provided on reconsideration lacked a rationalized medical opinion and, all but the August 4, 1997 note from Dr. Gold, had been previously considered and determined insufficient by the Office. The August 4, 1997 note merely indicated a diagnosis and the dates that appellant had been treated for his condition. The Office specifically requested medical reports that provided a history of appellant's heart condition and related any factors of his employment to appellant's June 26, 1998 cardiac event. Notwithstanding the Office's request, the medical reports provided in support of appellant's reconsideration request simply outlined treatment for his heart condition and reiterated information previously furnished in

[5] *See* C.F.R. § 501.3(d). Because more than one year has elapsed between the issuance of the Office's December 4, 1997 decision and December 28, 1998, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the December 4, 1997 and prior decisions.

support of appellant's claim. The Board has held that evidence or an argument which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[6]

Appellant was advised that he had a 30-day period with which to submit a rationalized medical opinion describing the causal relationship between the diagnosed condition and appellant's employment. Appellant's misunderstanding of his burden of proof is not a reason for granting merit review. The Board has held that the submission of evidence or an argument which does not address the particular issue involved does not constitute a basis for reopening a case.[7]

Appellant has not established that the Office abused its discretion in its July 6, 1998 decision, by denying appellant's request for further review of the merits of his claim under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, that he advanced a point of law or a fact not previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office.

The decision of the Office of Workers' Compensation Programs dated July 6, 1998 is affirmed.

Dated, Washington, D.C.
May 5, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

[6] *Saundra B. Williams*, 46 ECAB 546 (1995).

[7] *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).