U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS H. BASSINGTHWAITE and DEPARTMENT OF THE ARMY, Fort Campbell, KY

Docket No. 00-1395; Submitted on the Record;
Issued August 13, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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

This case has previously been on appeal before the Board. By decision and order dated October 8, 1998, the Board found that appellant had not established that he sustained an employment injury on June 20, 1991 as alleged. The Board noted that appellant waited seven days to report the injury, that he continued to work following the alleged injury, that he first obtained medical care eight days after the injury, and that the first medical report that mentioned the alleged June 20, 1991 injury was dated August 13, 1991. The Board found, "The above inconsistencies cast serious doubt upon the occurrence of a June 20, 1991 injury as alleged."[1]

By letter dated July 30, 1999, appellant requested reconsideration, contending that his injury occurred during the desert storm war, a time when his supervisor stated nobody could take leave. Appellant submitted his transcript of testimony of his supervisor at a Merit Systems Protection Board hearing held on May 16, 1995, an April 15, 1999 report from his attending physician and copies of claim forms and other documents already contained in the case record.

By decision dated February 8, 2000, the Office found that appellant had not submitted new and relevant evidence that addressed the inconsistencies in the evidence cited by the Board.

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

[1] Docket No. 96-2042.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
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> (1) end, decrease, or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2), 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. Section 10.608(b) 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. 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.[2] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[3]

Appellant's July 30, 1999 request for reconsideration did not show that the Office erroneously applied or interpreted a specific point of law, nor did it advance a relevant legal argument not previously considered by the Office. Appellant submitted new evidence, but this evidence was not relevant or pertinent. The April 25, 1999 medical report did not make any reference to the alleged June 20, 1991 employment injury, and the transcript of the supervisor's testimony at a Merit Systems Protection Board hearing, even if accepted as accurate,[4] does not indicate that appellant reported a June 20, 1991 injury to his supervisor at any time before he completed his claim form on June 27, 1991. The Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 20 C.F.R. §§ 10.606(b)(2) and 10.608(b).

The Office's delay in issuing its decision on appellant's request for reconsideration also did not require a review of the merits of his claim. The Office's procedure manual states: "There is no obligation to conduct a merit review on insufficient evidence if the maximum one-year time limit for requesting review by the Board will have expired within the 90-day period following the Office's receipt of the claimant's reconsideration request."[5] Appellant's request for reconsideration of the Board's October 8, 1998 decision and order was received by the Office on August 3, 1999. Not only would the one-year limit have expired before 90 days, but appellant

[2] *Eugene F. Butler*, 36 ECAB 393 (1984).

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

[4] This transcript apparently was prepared by appellant rather than by a court reporter.

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.7 (June 1996).

in any event could not request an appeal of the Board's October 8, 1998 decision and order, which was the most recent decision of the merits of his claim.

The decision of the Office of Workers' Compensation Programs dated February 8, 2000 is affirmed.

Dated, Washington, DC
August 13, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member