U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICKY R. LEWIS and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

Docket No. 00-577; Submitted on the Record;
Issued February 9, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further reconsideration 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 October 6, 1999 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, the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[1] Section 10.608 provides that, where the request is timely but fails to meet at least one of the criteria of 10.606(b)(2), the Office will deny the application for consideration without reopening a case for review on the merits. Material which is repetitious or duplicative does not constitute a basis for reopening a case.[2] Furthermore, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[3]

On January 5, 1998 appellant, then a 43-year-old laborer/custodian, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he developed carpal tunnel syndrome in his right hand as a result of his federal employment.

[1] 20 C.F.R. § 10.606(b)(2).

[2] *James A. England*, 47 ECAB 115 (1995).

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

By letter dated January 21, 1998, the Office requested that appellant submit further information. Additional evidence was not received. On February 25, 1998 the Office denied appellant's claim for compensation, for the reason that appellant had not shown that he sustained an injury as alleged. The Office noted that, although the initial evidence of file supported that he actually experienced the claimed employment factor, there was no evidence that a condition had been diagnosed in connection with this.

By letter dated March 30, 1998, appellant requested reconsideration of the Office's decision. In support thereof he submitted medical evidence which consisted of a medical statement by the employee's physician and disability slips. In a decision dated April 10, 1998, the Office determined that the evidence submitted was sufficient to support the "fact of an injury" sustained by the claimant, as alleged. However, the Office denied the claim on the basis that the evidence failed to establish that the claimed medical condition of carpal tunnel syndrome was causally related to factors of employment prior to December 26, 1997.

By letter dated September 15, 1998, appellant again requested reconsideration. In support of this request, he submitted two medical records which discuss a neck condition that is not the issue in the instant case. The other medical report is a record of treatment at University Med Net for carpal tunnel syndrome on January 2, 1998. None of these reports linked appellant's carpal tunnel syndrome to his employment.

In a decision dated October 1, 1998, the Office denied modification of the April 10, 1998 decision.

On September 22, 1999 appellant requested reconsideration of the October 1, 1998 decision. In support of this request, appellant submitted medical notes from Dr. William J. Petersilge, a Board-certified orthopedic surgeon, which included a summary medical report dated January 5, 1999, wherein he noted that he has treated appellant for pain in his right upper extremity since July 22, 1995 on an intermittent basis, that an electromyography performed by a neurologist noted borderline abnormal median nerve studies bilaterally, and that this was not diagnostic but somewhat suggestive of carpal tunnel syndrome. Dr. Petersilge recommended that appellant "refrain from use of vibrating machinery as he seems to accommodate his disability fairly well when he is not using vibrating machinery."

By decision dated October 6, 1999, the Office denied reconsideration, finding the evidence submitted was of a repetitious nature and not sufficient to warrant review of the prior decision.

The evidence submitted by appellant in support of his request for reconsideration, specifically the report of Dr. Petersilge, does not warrant reopening the case for review on the merits as it does not constitute relevant and pertinent new evidence not previously considered by the Office.[4] Dr. Petersilge finds that as of the date of his examination, January 5, 1999, appellant continued to complain of pain with the use of vibrating machinery, and that appellant stated that this gives him entire right upper extremity paresthesias and pain radiating from his palm up his shoulder. Dr. Petersilge recommended that appellant refrain from using vibrating machinery.

[4] 20 C.F.R. § 606(b)(2).

However, Dr. Petersilge did not address what caused appellant's carpal tunnel syndrome, which is the relevant issue in this case. Accordingly, as appellant has failed to submit new relevant information, the Office properly denied reconsideration on the merits.

The decision of the Office of Workers' Compensation Programs dated October 6, 1999 is affirmed.[5]

Dated, Washington, DC
February 9, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

[5] The Board's jurisdiction is limited to final decision of the Office issued within one year of the filing of the appeal. 20 C.F.R. § 501.3(d). Since appellant filed this appeal on October 23, 1999, the only decision that this Board has jurisdiction over is the October 6, 1999 decision denying reconsideration.