U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDITH G. RITTMEISTER and DEPARTMENT OF THE NAVY, PACIFIC FLEET, Honolulu, HI

Docket No. 00-1996; Submitted on the Record;
Issued May 3, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

The Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

In August 1997, appellant, then a 57-year-old recreation specialist, filed a claim alleging that she sustained an emotional condition due to various incidents and conditions at work. The Office initially denied appellant's claim in February 1998 on the grounds that she did not establish any compensable employment factors. By decision dated September 10, 1998, an Office hearing representative found that appellant had established a compensable employment factor with respect to the fact that appellant's supervisor failed to give her written notice in writing of when her performance became minimally satisfactory. The Office hearing representative further determined that the case should be remanded to the Office in order to refer appellant, along with a new statement of accepted facts, for a second opinion evaluation to be followed by an appropriate decision.

In November 1998, appellant was referred for a second opinion evaluation examination with Dr. Mohan Nair, a Board-certified psychiatrist. Dr. William Quigley, an attending clinical psychologist, accompanied appellant to the examination. In an extensive report dated January 14, 1999, Dr. Nair indicated that appellant did not sustain an emotional condition due to the accepted employment factor. By decision dated January 19, 1999, the Office denied appellant's claim on the grounds that the medical evidence did not show appellant sustained an emotional condition due to an accepted employment factor. By decision dated March 10, 2000, the Office denied appellant's request for merit review.

The only decision before the Board on this appeal is the Office's March 10, 2000 decision denying appellant's request for a review on the merits of its January 19, 1999 decision. Because more than one year has elapsed between the issuance of the Office's January 19, 1999 decision and May 23, 2000, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the January 19, 1999 decision.[1]

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[2] 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) submit relevant and pertinent new evidence not previously considered by the Office.[3] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file her application for review within one year of the date of that decision.[4] 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.[5]

In support of her January 13, 2000 reconsideration request, appellant submitted several February 1999 reports in which Dr. Walter Wang, an attending Board-certified family practitioner, indicated that he provided medication to appellant rather than psychotherapy. Dr. Wang noted that appellant continued to suffer from depression, anxiety and headaches. The submission of this report is not sufficient to reopen appellant's claim in that it does not relate to the main issue of the present case, *i.e.*, whether appellant submitted medical evidence showing that she sustained an emotional condition due to the accepted employment factor, the fact that appellant's supervisor failed to give her written notice in writing when her performance became minimally satisfactory. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[6] Moreover, Dr. Wang's assessment of appellant's medical condition is similar to that contained in prior reports. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[7]

Appellant also submitted a January 11, 2000 report in which Dr. Quigley asserted that Dr. Nair misunderstood Dr. Wang's role in appellant's care and improperly evaluated the clinical records. However, it is unclear how this argument relates to the main issue of the present case, which concerns the lack of medical evidence relating appellant's claimed condition to the

[1] *See* 20 C.F.R. § 501.3(d)(2).

[2] 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 her own motion or on application." 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.606(b)(2).

[4] 20 C.F.R. § 10.607(a).

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

[6] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[7] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

accepted employment factor. Dr. Quigley stated that Dr. Nair did not adequately stress appellant's reaction to her receipt of a "minimally successful" performance evaluation. However, this point is not relevant to appellant's claim as the Office explicitly indicated that appellant's receipt of her performance evaluation was not an employment factor.[8]

In the present case, appellant has not established that the Office abused its discretion in its March 10, 2000 decision by denying her request for a review on the merits of its January 19, 1999 decision under section 8128(a) of the Act, because she did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office.

The decision of the Office of Workers' Compensation Programs dated March 10, 2000 is affirmed.

Dated, Washington, DC
May 3, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[8] Rather, the accepted employment factor concerned the fact that, prior to receipt of the performance evaluation, appellant's supervisor failed to give her written notice in writing at the point when her performance became minimally satisfactory.