U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAULA FANTROYAL and SOCIAL SECURITY ADMINISTRATION, MID-ATLANTIC PROGRAM SERVICE CENTER, Philadelphia, PA

Docket No. 01-657; Submitted on the Record;
Issued October 29, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of her claim.

On September 10, 1997 appellant, then a 45-year-old clerk typist, filed a claim for chemical sensitivities that she attributed to her exposure to copy machine toner and fumes from building renovations. Appellant submitted medical evidence in support of her claim, and more detailed descriptions of the exposures to which she attributed her condition. The employing establishment submitted its response to appellant's request for reasonable accommodation, and information on appellant's exposures, including air quality surveys and information sheets on chemicals to which appellant alleged that she had been exposed.

By decision dated December 31, 1998, the Office found that the medical evidence did not establish that appellant's disability was causally related to her claimed exposures. As the basis of its decision, the Office relied on the opinion of Dr. Jeffrey Melin, who is Board-certified in allergy and immunology, the physician to whom the Office referred appellant for a second opinion evaluation.

By letter dated December 29, 1999, appellant requested reconsideration, contending that Dr. Melin did not perform the testing or have the expertise to properly assess her condition. Appellant submitted 15 photographs of the renovation work done in and near her work area.

By decision dated January 31, 2000, the Office found that the evidence submitted in support of appellant's request for reconsideration was cumulative or irrelevant, and not sufficient to warrant review of its prior decision.

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim.

The only Office decision before the Board on this appeal is the Office's January 31, 2000 decision finding that appellant's application for review was not sufficient to warrant review of its prior decision. Since more than one year elapsed between the date of the Office's most recent merit decision on December 31, 1998 and the filing of appellant's appeal on January 5, 2001, the Board lacks jurisdiction to review the merits of appellant's claim.[1]

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
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> (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 December 29, 1999 request for reconsideration does not show that the Office erroneously applied or interpreted a specific point of law, nor does it advance a legal argument not previously considered by the Board. Her unsubstantiated allegation does not show that Dr. Melin, a Board-certified specialist in the appropriate field of medicine, did not perform appropriate testing or that he was not qualified to assess her condition. The photographs that appellant submitted do not constitute relevant and pertinent evidence not previously considered. Appellant's exposure to dust and fumes during building renovations was already established; her claim was denied on the basis of an analysis of the medical evidence.

[1] 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office final decision being appealed.

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

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

The decision of the Office of Workers' Compensation Programs dated January 31, 2000 is affirmed.

Dated, Washington, DC
October 29, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member