U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JULIE K. KAUFFMAN and U.S. POSTAL SERVICE,
GREATER MICHIGAN DISTRICT, Grand Rapids, MI

Docket No. 01-1619; Submitted on the Record;
Issued April 5, 2002

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.

The only decision before the Board on this appeal is the Office's March 21, 2001 decision denying appellant's request for a review on the merits of its September 27, 1999 decision. Because more than one year has elapsed between the issuance of the Office's September 27, 1999 decision and June 4, 2001, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the September 27, 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 also must file his or her application for review within one year of the date of that decision.[4] When a claimant fails to

[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).

meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review.[5]

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.[6] Moreover, the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[7]

While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.[8]

The history of this case in brief is as follows. Appellant suffered an employment-related injury on October 21, 1997 that was accepted for lumbar strain and subluxation on December 22, 1997. Appellant returned to work in a part-time and light-duty capacity. In a decision dated September 27, 1999, the Office terminated all benefits finding residuals of the accepted injury had ceased.

On July 18, 2000 appellant requested reconsideration of the September 27, 1999 termination and requested payment of medical bills for services subsequent to the termination and for lost wages for September 27, 28 and 29, 1999. Along with her request for reconsideration, appellant submitted the unpaid medical bills.

In a nonmerit decision dated March 21, 2001, the Office denied appellant's request for reconsideration finding that the evidence presented was not relevant to the issue of whether appellant had any disability on or after September 27, 1999.

The Board finds that appellant has not established that the Office abused its discretion by denying her request for a review on the merits of its September 27, 1999 decision under section 8128(a) of the Act. With her request for reconsideration, appellant 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. Appellant only submitted medical bills. The bills do not establish or suggest an ongoing disability causally related to appellant's accepted condition. Therefore, the Office did not abuse its discretion in denying appellant a merit review of its September 27, 1999 decision.[9]

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[5] 20 C.F.R. § 10.608(b).

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

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

[8] *John F. Critz*, 44 ECAB 788, 794 (1993).

[9] The Board notes in the Office's March 21, 2001 denial of reconsideration the decision did rule favorably for appellant on the issue of lost wages prior to termination and therefore that issue was not appealed to the Board.

The decision of the Office of Workers' Compensation Programs dated March 21, 2001 is affirmed.

Dated, Washington, DC
April 5, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member