U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERRY G. EZEKIEL and U.S. POSTAL SERVICE,
POST OFFICE, Knoxville, TN

Docket No. 01-1909; Submitted on the Record;
Issued April 5, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

The Board has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretion to reopen appellant's case for further consideration of the merits of her claim.

The only decision before the Board on this appeal is the Office's July 6, 2001 decision denying appellant's application for a review on the merits of its July 10, 2000 decision.[1] Because more than one year has elapsed between the issuance of the Office's July 10, 2000 merit decision and July 11, 2001, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the July 10, 2000 merit decision.[2]

Under section 8128(a) of the Act,[3] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulation,[4] which provides that a

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[1] By decision dated July 10, 2000, an Office hearing representative modified a June 15, 1999 decision to find that appellant's accepted condition of bilateral foot sprain had resolved as of October 27, 1998 and not October 21, 1998 and that appellant had no permanent partial impairment as a result of the accepted work-related injury and, therefore, was not entitled to a schedule award.

[2] *See* 20 C.F.R. § 501.3(d)(2). The Board notes that as the July 10, 2000 decision was issued on a Monday, appellant had until July 10, 2001 in which to file her appeal. Appellant's appeal is postmarked July 11, 2001, a Wednesday; accordingly, appellant filed her appeal with the Board one day too late to obtain a review of that decision.

[3] 5 U.S.C. § 8128(a).

[4] 20 C.F.R. § 10.606(b) (1999).

claimant may obtain review of the merits if her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(i) Shows that OWCP erroneously applied or interpreted a specific point of law; or
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> "(ii) Advances a relevant legal argument not previously considered by OWCP; or
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> "(iii) Constitutes relevant and pertinent new evidence not previously considered by the OWCP."

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[5] If a claimant fails to submit relevant evidence not previously of record or advance legal contentions or facts not previously considered, the Office will deny the application for reconsideration without reopening the case for review.[6] The submission of evidence, which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[7]

In the present case, the Office found that appellant's accepted work-related condition of aggravation of bilateral foot sprain had resolved as of October 27, 1998 and that appellant had no permanent partial impairment as a result of the accepted work-related injury to entitle her to a schedule award. With her reconsideration request, which the Office received on July 2, 2001, appellant submitted evidence. The Board finds that this evidence is insufficient to require reopening of appellant's case for further review of the merits of her claim as it is either irrelevant, immaterial or duplicative of evidence already in the case record.

Appellant asserted that her employer coerced her doctor into stating that she had no remaining employment-related disability. However, no new evidence was presented in support of her contentions regarding the employing establishment. Appellant's submission previously submitted reports, letters and disability certificates from Dr. Ivan Cooper were previously considered and do not constitute a basis for reopening a case.

Appellant also asserted that she needed to be vested for five years as a career employee in order to apply for permanent light duty and that the Office should have never closed her case. As the Office determined that appellant's work-related injury had resolved based on the medical evidence of record. Any requirements the employing establishment may have regarding career employees and options for permanent light-duty work have no bearing on appellant's workers' compensation claim.

[5] 20 C.F.R. § 10.608(b) (1999).

[6] *John E. Watson*, 44 ECAB 612, 614 (1993).

[7] *Jerome Ginsberg*, 32 ECAB 31 (1980).

In the present case, appellant has not established that the Office abused its discretion in its July 6, 2001 decision by denying her request for a review on the merits of its July 10, 2000 decision under section 8128(a) of the Act, because she has failed to show that the Office erroneously applied or interpreted a point of law, failed to advance a point of law or a fact not previously considered by the Office or failed to submit relevant and pertinent evidence not previously considered by the Office.

Consequently, the decision of the Office of Workers' Compensation Programs dated July 6, 2001 is hereby affirmed.

Dated, Washington, DC
April 5, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member