U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINSLEY M. HAMILTON and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Los Angeles, CA

Docket No. 02-570; Submitted on the Record;
Issued August 13, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
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 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 to reopen appellant's case for further consideration of the merits of his 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 November 30, 2001 decision denying appellant's application for a review on the merits of its November 27, 2000 decision denying appellant's recurrence claim.[1] Because more than one year has elapsed between the issuance of the Office's November 27, 2000 merit decision and December 19, 2001, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the November 27, 2000 merit decision denying appellant's recurrence claim.[2]

Under section 8128(a) of the Federal Employees' Compensation 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 regulations, which provides that 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.[4] Section 10.608(a)

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[1] By decision dated November 27, 2000, the Office denied appellant's recurrence claim.

[2] *See* 20 C.F.R. § 501.3(d)(2).

[3] 5 U.S.C. § 8128(a).

[4] 20 C.F.R. § 10.606(b)(2) (1999). *See generally* 5 U.S.C. § 8128(a).

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.[5] 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.[6] Evidence that does not address the particular issue involved does not constitute a basis for reopening the case.[7]

In the present case, the Office accepted a left thumb fracture and a right elbow sprain as a result of an April 22, 1992 work-related incident whereby appellant fell from a ladder. On April 20, 1999 appellant filed a notice of recurrence alleging that his right elbow had never healed. By decision dated November 27, 2000, the Office denied appellant's claim for a recurrence of injury on the basis that the evidence of record failed to establish a medical condition related to the April 22, 1992 injuries or to employment activities during appellant's last year of federal employment. As it was not clear whether appellant was claiming an actual recurrence of his accepted injuries or that he sustained a new injury in 1999, in letters dated October 3 and 12, 2001 the Office advised appellant of his various options. In his November 8, 2001 letter requesting reconsideration, appellant's attorney asked for time to submit a causal relationship report regarding appellant's 1999 work-related condition. He advised that a copy of the Form CA-2 duly filed with the Veterans Administration Medical Center duly signed by Jerry Mullins, his client's supervisor at that time, was included. Appellant's attorney further advised that additional document would be filed.

The Office properly found that the November 8, 2001 letter requesting reconsideration was *prima facie* insufficient to warrant a merit review of its prior decision of November 27, 2000. It properly noted that the grounds upon which reconsideration was being requested was not specified as specifically set forth in the appeal rights attached to its November 27, 2000 decision. Furthermore, the letter neither raised substantive legal questions nor included new and relevant evidence to warrant a merit review of its prior decision of November 27, 2000. Although the record does not reflect that the Form CA-2a was submitted on reconsideration, the Board notes that this evidence was previously before the Office and, as it would be considered duplicative evidence, it would not constitute a basis for reopening appellant's claim for further consideration on its merits.

The Office also properly found that there was no basis to allow additional time prior to acting on the request for reconsideration. The Office noted and the record reflects that no medical evidence had been received since the November 27, 2000 decision. The Office further reasoned that, despite the fact that appellant's attorney services had recently been obtained, appellant was clearly aware of his options regarding how he wished to proceed in this case as indicated in its October 3 and 12, 2001 letters to appellant.

On appeal, appellant's attorney argued that the Office denied his request for additional time to submit medical evidence and issued its decision denying reconsideration about 22 days

[5] 20 C.F.R. § 10.608(a) (1999).

[6] *Howard A. Williams,* 45 ECAB 853 (1994).

[7] *Richard L. Ballard,* 44 ECAB 146, 150 (1992); *Edward Mathew Diekemper*, 31 ECAB 224, 225 (1979).

from the date of his request for reconsideration. The Board notes that there is nothing within the Office's procedural manual which requires that the record be held open for a specified time until a request for reconsideration is ruled upon. Moreover, appellant was specifically informed in the appeal rights which were attached to the November 27, 2000 decision that supporting evidence should be submitted with a request for reconsideration and had adequate time in which to submit such evidence. Additionally, as the record reflects, the Office clearly advised appellant of his options in its letters of October 3 and 12, 2001.

Appellant's attorney further argued that the Office failed to consider evidence which was submitted under a cover letter dated December 6, 2001. The Board notes that although it does not appear that the evidence stated with the attorney's letter of December 6, 2001 was submitted, any evidence submitted after the Office issues a decision should be accompanied by a request for reconsideration. Additionally, as the Board's jurisdiction on appeal is limited to a review of the evidence which was in the case record before the Office at the time of its final decision, the Board is precluded from reviewing this evidence.[8]

Accordingly, in the present case, appellant has not established that the Office abused its discretion in its November 30, 2001 decision by denying his request for a review on the merits of its November 27, 2000 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, failed to advance a point of law not previously considered by the Office or failed to submit relevant and pertinent evidence not previously considered by the Office.

As the only limitation on the Office's authority is reasonableness, an abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.[9] Appellant has made no such showing here.

[8] *See* 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 10.606(b) (1999).

[9] *Daniel J. Perea*, 42 ECAB 214 (1990).

Consequently, the decision of the Office of Workers' Compensation Programs dated November 30, 2001 is hereby affirmed.

Dated, Washington, DC
August 13, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member