U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE B. LEGRAND and DEPARTMENT OF THE NAVY, PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

Docket No. 01-854; Submitted on the Record;
Issued June 19, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that the position of security guard dispatcher represented appellant's wage-earning capacity, effective November 7, 1999, the date it reduced her compensation benefits; and (2) whether the refusal of the Office to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the Office hearing representative dated May 11, 2000 pertaining to the wage-earning capacity determination is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for review.

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).[1] This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.[2] Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the

[1] 20 C.F.R. § 10.608(a) (1999).

[2] 20 C.F.R. § 10.608(b)(1) and (2) (1999).

Office will deny the application for reconsideration without reopening the case for a review on the merits.[3]

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.[4]

In the request for reconsideration, appellant's counsel contended that the opinion of Dr. Arnold Sadwin, appellant's treating Board-certified psychiatrist who advised that she could not work in the selected position, should be credited. Appellant also submitted a report from Dr. Sadwin dated April 11, 2000. Dr. Sadwin, however, had previously submitted numerous reports, and in his report dated April 11, 2000, merely reiterated the findings, conclusions and recommendations that he had postulated previously.[5] The Board has long held that the submission of evidence or legal argument which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[6] The Board thus finds that Dr. Sadwin's April 11, 2000 report was insufficient to warrant merit review, and the Office properly denied appellant's request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated October 27 and May 11, 2000 are hereby affirmed.

Dated, Washington, DC
June 19, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[3] 20 C.F.R. § 10.608(b) (1999).

[4] *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

[5] The Board further notes that Dr. Sadwin had been on one side of the conflict in the medical opinion that the impartial medical examiner resolved, and the Board has held that an additional report from appellant's physician, which essentially repeated his earlier findings and conclusions, was insufficient to overcome the weight accorded to an impartial medical examiner's report where appellant's physician had been on one side of the conflict. *Thomas Bauer*, 46 ECAB 257 (1994).

[6] *Saundra B. Williams*, 46 ECAB 546 (1995).