U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BLONDELL BRADLEY and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Gainesville, FL

Docket No. 01-1691; Submitted on the Record;
Issued June 14, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

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 under 5 U.S.C. § 8128(a).

On October 21, 1994 appellant, then a 43-year-old nurse, filed a claim for an injury to her left knee sustained on that date when she fell at work. The Office accepted that appellant sustained a left knee contusion and a tear of her medial meniscus, though the arthroscopic surgery performed by Dr. J. Stephens Waters on April 14, 1995 showed a stable medial meniscus.

On May 21, 1998 appellant began treatment with Dr. Phillip K. Springer, a psychiatrist at a pain management center. This treatment consisted of psychotherapy and prescription of medications. In a report dated June 12, 1998, Dr. Springer indicated that he was treating appellant for essential hypertension, recurrent major depressive disorder, chronic pain disorder and pain in multiple joint sites and low back pain. In a report dated May 12, 1999, Dr. Springer stated that the conditions for which he was treating appellant were related to her October 21, 1994 employment injury: "She suffers from severe pain in her low back and in joint multiple sites which stems from the accident at work. She reports a pain level seven and above on each visit. The high levels of pain have lead to hypertension."

By decision dated June 23, 1999, the Office determined that further medical treatment at its expense by Dr. Springer was not authorized, as his treatment was for conditions unrelated to her left knee condition.

By letter dated June 21, 2000, appellant requested reconsideration, contending that her back pain and Dr. Springer's treatment were directly related to her employment injury, that the Office's failure to properly administer her claim resulted in depression, and that medical documentation showed that she had back complaints shortly after her October 21, 1994 employment injury. Appellant submitted numerous medical reports, most of which were duplicates of reports already in the case record.

By decision dated July 26, 2000, the Office found that appellant had not submitted new and relevant evidence, and that her request for reconsideration was not sufficient to warrant review of its June 23, 1999 decision.

The only Office decision before the Board on this appeal is the Office's July 26, 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 June 23, 1999 and the filing of appellant's appeal on May 29, 2001, the Board lacks jurisdiction to review the merits of appellant's claim.[1]

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

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]

Many of the medical reports appellant submitted with her June 21, 2000 request for reconsideration were reports prepared in 1995 by Dr. Steven A. Reid, an attending Board-certified neurosurgeon. The only reports from Dr. Reid that were not copies of reports already contained in the case record were reports dated April 24 and May 15, 1995 that listed her restrictions for work. These reports are not relevant to the issue of whether appellant should be reimbursed for Dr. Springer's treatment. Other reports that were copies of those already contained in the case record were reports from a physical therapist, a report of a lumbar spine

[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).

magnetic resonance imaging on March 7, 1995, a November 15, 1994 report from Dr. Waters stating that appellant had no pain in her back or hip region, and notes dated January 5 and February 9, 1995 apparently from the employing establishment's medical unit.

A January 5, 1995 report from Dr. James T. Menges was not previously contained in the case record. In this report on an Office form Dr. Menges diagnosed lumbar strain, and in answer to the form's question whether there was any history or evidence of concurrent or preexisting injury, disease or physical impairment, he stated, "either injured in initial fall and masked by knee sx [symptoms] or subsequent 2º [secondary to] altered gait." Although this report was not already contained in the case record, its statement on the possible etiology of appellant's back pain is essentially repetitive of that expressed by Dr. Reid in a March 22, 1995 report: "It is my impression that [appellant] may be symptomatic of her lumbar dis[c] herniation. On the other hand many of her symptoms may be related to her knee pathology and the resultant alteration in posture and body mechanics."

Appellant has not shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant legal argument not previously considered by the Office. She has not submitted new and relevant evidence that treatment by Dr. Springer is related to her October 21, 1994 employment injury.

The July 26, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
June 14, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member