U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALVIN D. GANAWAY and DEPARTMENT OF THE ARMY, RED RIVER ARMY DEPOT, Texarkana, TX

Docket No. 01-1322; Submitted on the Record;
Issued March 19, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO, DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

This case has previously been on appeal before the Board. By decision dated January 21, 1997, the Board found that appellant had not met his burden of proof to establish that his back condition was causally related to his August 28 1992 employment injury, or that this injury resulted in disability after September 28, 1992.[1]

Thereafter, appellant requested reconsideration and submitted additional evidence on several occasions. The Office, by decisions dated March 17, June 19 and July 29, 1997 and April 16, 1998 and January 21, 1999 found that the additional evidence submitted by appellant was not sufficient to warrant modification of its prior decisions. In the January 21, 1999 decision, the Office found that it could not be determined if the persons signing the clinic notes submitted by appellant were physicians and that these notes did not explain how appellant's current pain was related to his August 28, 1992 injury or how this injury resulted in disability after September 28, 1992.

By letter dated January 20, 2000, appellant again requested reconsideration and submitted additional evidence.

By decision dated February 26, 2001, the Office found that the additional evidence was repetitious or not relevant to the issue upon which his case was denied and that it was, therefore, not sufficient to warrant review of the prior decisions.

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

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[1] Docket No. 95-2436.

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]

Appellant's January 20, 2000 request for reconsideration does not show that the Office erroneously applied or interpreted a specific point of law, nor does it advance a relevant legal argument not previously considered by the Office. Although this request for reconsideration was accompanied by new evidence not previously considered by the Office, none of this evidence was relevant and pertinent to the issue of whether appellant's back condition was causally related to his August 28 1992 employment injury, or that this injury resulted in disability after September 28, 1992.

Medical reports addressing conditions such as an abscessed tooth and bronchitis have no relevance to appellant's claim for a back and left shoulder injury. Notes from physical therapists and dieticians do not constitute competent medical evidence[4] and, therefore, are not relevant and pertinent. The list of Veterans Administration physicians is not relevant, there is no showing that any of these doctors addressed the issue of causal relation to the August 28, 1992 injury. The reports of findings on x-rays of the left shoulder (reported to be normal) and of the cervical spine and on magnetic resonance imaging of the cervical spine are not relevant and pertinent, as they do not indicate whether the conditions found are causally related to appellant's August 28, 1992 employment injury. For the same reason, the medical reports noting appellant's left shoulder and neck pain are also not relevant and pertinent.

Some of the reports from Veterans Administration physicians mention the August 28, 1992 injury: An October 16, 1995 report lists a nonservice-connected injury to the left arm, neck

[2] *Eugene F. Butler*, 36 ECAB 393 (1984).

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

[4] *Cheryl A. Monnell*, 40 ECAB 545 (1989).

and back; a June 22, 1998 report indicates that appellant had a left shoulder, neck and arm injury on August 28, 1992; and an October 29, 1999 report stated that appellant was being seen "for a painful left shoulder and neck which he related to a fall suffered in 1992." These reports are not relevant because the statements about the August 28, 1992 injury are history, not a physician's reasoned medical opinion on causal relation, which is what appellant needs to submit to advance her claim. A November 19, 1999 report from Dr. Susan Haney attributes appellant's left shoulder and arm pain and weakness to stenosis of the cervical spine, but there is no medical evidence that the stenosis is related to appellant's August 28, 1992 employment injury. As none of the evidence submitted with appellant's January 20, 2000 request for reconsideration addressed the issue of whether appellant's back condition was causally related to his August 28, 1992 employment injury, or whether this injury resulted in disability after September 28, 1992, the new evidence is not relevant and pertinent. The Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

The February 26, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
March 19, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member