U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TOMMY RIVERS and DEPARTMENT OF THE ARMY, ANNISTON ARMY DEPOT, Anniston, AL

Docket No. 01-1646; Submitted on the Record;
Issued March 4, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, A. PETER KANJORSKI

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).

On July 22, 1999 appellant, then a 49-year-old crane operator, filed a claim for a loss of hearing that he attributed to noise exposure in his employment.

The Office obtained information from the employing establishment on appellant's exposure to noise during his employment. The Office then referred appellant, the audiograms done at the employing establishment, and a statement of accepted facts to Dr. Howard W. Loveless, a Board-certified otolaryngologist, for an evaluation of his hearing loss and its relationship to his employment. On March 8, 2000 an Office medical adviser applied the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* to the findings of Dr. Loveless' February 28, 2000 audiogram and concluded that it showed a 12 percent binaural loss of hearing.

By decision dated April 3, 2000, the Office issued appellant a schedule award for a 12 percent permanent binaural loss of hearing.

By letter dated April 17, 2001, appellant, through his representative, requested reconsideration, stating:

> "The [Office] DMA [district medical adviser] awarded [appellant] 12 percent bilateral. Yet the audiologist, the [employing establishment] and the [Office] appointed physician diagnosed a much higher percentage of bilateral hearing loss.
>
> "Because of this fact I am requesting reconsideration with the percentage of hearing loss to be the only issue."

By decision dated April 26, 2001, the Office found: "Because the April 3, 2001 letter neither raised substantive legal questions nor included new and relevant evidence, it is insufficient to warrant a review of our prior decision at this time."

The only Office decision before the Board on this appeal is the Office's April 26, 2001 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 April 3, 2000 and the filing of appellant's appeal on June 6, 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 his 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
>
> (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]

The argument of appellant's representative in his April 17, 2001 request for reconsideration finds no support in the evidence in the case record. There is no report from a physician other than Dr. Loveless in the case record, and none of the audiograms from the employing establishment indicate that appellant has greater than a 12 percent binaural loss of hearing.

[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's final decision being appealed.

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

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

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

Dated, Washington, DC
March 4, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member