U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROY P. GATES and DEPARTMENT OF AGRICULTURE, FOREST SERVICE, DEER LODGE NATIONAL FOREST, Philipsburg, MT

Docket No. 01-1547; Submitted on the Record;
Issued May 21, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON, 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 his claim under 5 U.S.C. § 8128(a).

The Board has issued decisions in two prior appeals by appellant. By decision dated February 26, 1997, the Board found that appellant had not established that his degenerative arthritis of the cervical spine, double vision, tinnitus or seizure disorder were causally related to his August 6, 1991 employment injury.[1] The Board found that appellant had established that his migraine headaches were aggravated by the employment injury. By decision dated March 7, 2000, the Board found that appellant had not established that his seizure disorder or his cervical spine conditions were causally related to his August 6, 1991 employment injury. The Board found that an April 22, 1997 report from Dr. William S. Masland, a Board-certified neurologist, indicated that appellant's epilepsy was related to trauma incurred at work, but that this report was insufficient to establish that appellant's epilepsy was causally related to his employment for the reasons that this report did not contain a history of appellant's employment injury or any rationale explaining why the doctor believes appellant's epilepsy is related to his employment.[2] The Board denied appellant's petition for reconsideration by decision dated August 18, 2000.

By letter dated February 21, 2001, appellant requested reconsideration. Appellant submitted a copy of his honorable discharge from the U.S. Navy on April 19, 1979, a certificate from the Department of Justice that he had completed basic school at the Montana Law Enforcement Academy from September 9 to November 2, 1984, a copy of a transcript of a March 7, 2000 Department of Veterans Affairs hearing regarding appellant's claim for a skin condition, copies of his preemployment medical examinations for the employing establishment on May 29, 1991[3] and for other federal employers on March 25, 1983, December 19, 1985 and

[1] Docket No. 95-1186.

[2] Docket No. 98-1953.

[3] Appellant was employed as a seasonal forestry aid.

September 28, 1987, and a report from Dr. Masland dated February 13, 2001 that stated: "[Appellant] has provided me with copies of previous medical contacts. Upon reviewing these it is apparent that [appellant] has enjoyed good health until he was injured." Appellant also submitted copies of evidence already in the case record, including medical reports and statements from his mother and brothers.

By decision dated April 24, 2001, the Office found that the additional evidence was repetitious or irrelevant and not sufficient to warrant review of its 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).

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

Appellant has not shown that the Office erroneously applied or interpreted a specific point of law, nor has he advanced a relevant legal argument not previously considered by the Office. Of the evidence appellant submitted with his request for reconsideration, little was new; none was relevant. The Office denied appellant's claim, and the Board affirmed this denial, on the basis that appellant had not submitted rationalized medical evidence establishing a causal relationship between his seizure disorder and his August 6, 1991 employment injury. The evidence appellant submitted with his request for reconsideration was intended to establish that he did not have a preexisting seizure disorder. This is not what appellant needs to establish to substantiate his claim; rather, he needs to submit positive, rationalized medical evidence

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

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

sufficient to establish a causal relation between his seizure disorder and his August 6, 1991 employment injury.

The evidence appellant submitted is not relevant to that determination. The preemployment medical examinations indicate normal neurological and mental health but do not indicate that any testing was performed for a seizure disorder. Appellant's testimony and that of his mother at the Department of Veterans Affairs hearing only repeats their prior assertions that appellant had no preexisting condition. Dr. Masland's February 13, 2001 report does not show what records the doctor reviewed before stating that appellant "has enjoyed good health until he was injured," or indicate that the doctor is referring to the August 6, 1991 employment injury. None of the new evidence submitted by appellant is relevant to the basis on which his claim was denied.

The April 24, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 21, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member