U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MATHEW G. RIDDLE and U.S. POSTAL SERVICE,
POST OFFICE, Midflorida, FL

Docket No. 01-1864; Submitted on the Record;
Issued May 2, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The only decision before the Board on this appeal is the Office's July 3, 2001 nonmerit decision denying appellant's application for a reconsideration of the Office's June 20, 2000 merit decision.[1] Because more than one year has elapsed between the issuance of the Office's June 20, 2000 merit decision and July 9, 2001, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the June 20, 2000 decision.[2]

The Federal Register dated November 25, 1998 advised that, effective January 4, 1999, certain changes to 20 C.F.R. parts 1 to 399 would be implemented. The revised Office procedures pertaining to the requirements for obtaining a review of a case on its merits under 5 U.S.C. § 8128(a), state as follows:

> "(b) The application for reconsideration, including all supporting documents, must:
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> (1) Be submitted in writing;

[1] By this hearing representative's review of the written record the Office denied modification of its November 10, 1999 decision denying appellant's July 7, 1999 recurrence claim. The Office had accepted that on May 16, 1997 appellant had sustained a lumbosacral soft tissue muscle strain injury.

[2] *See* 20 C.F.R. § 501.3(d)(2).

(2) Set forth arguments and contain evidence that either:

> (i) Shows that [the Office] erroneously applied or interpreted a specific point of law;
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> (ii) Advances a relevant legal argument not previously considered by [the Office]; or
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> (iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office]."[3]

To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[4] The Board has found that the imposition of the one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under section 8128(a) of the Federal Employees' Compensation Act.[5] When a claimant fails to meet one of the above-mentioned standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[6]

In support of his reconsideration request, appellant submitted copies of unsigned medical progress notes dating from July 1 to July 28, 1999, "[n]o work" certificates dating from January 19, March 30, May 27 and June 2 to September 29, 1999, medical reports from Dr. Joseph Ragno, a Board-certified family practitioner, dating from March 9, June 3, June 23 and October 18, 1999 and February 14, 2000, a January 21, 1999 chiropractic report,[7] a Merit Systems Protection Board decision dated April 30, 2001 reversing appellant's removal from the employing establishment.

[3] 20 C.F.R. § 10.606(b)(1),(2).

[4] 20 C.F.R. § 10.607(a).

[5] *Diane Matchem*, 48 ECAB 532 (1997); *Jeanette Butler*, 47 ECAB 128 (1995); *Mohamed Yunis*, 46 ECAB 827 (1995); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[6] *See Mohamed Yunis, supra* note 5; *Elizabeth Pinero*, 46 ECAB 123 (1994); *Joseph W. Baxter*, 36 ECAB 228 (1984).

[7] This report did not diagnose a subluxation but did indicate that appellant sought a note excusing him from work for three days.

The Office performed a cursory review of the evidence and determined that the unsigned medical progress notes had no probative value as the author remained undetermined.[8] Moreover, the Office noted that these reports did not identify an injury-related recurrence of total disability, and were duplicates of previously submitted notes and therefore substantively had no new probative value.[9]

The Office also determined, after cursory review, that the "[n]o work" slips had no probative value as they had no rationale and did not address causal relation.[10]

After a cursory review, the Office further determined that the substance of Dr. Ragno's reports were repetitious and cumulative in nature of evidence already of record and considered by the Office. Moreover, three of these reports predated appellant's claimed recurrence of disability and, therefore, were not probative regarding a July 7, 1999 recurrence.

The Office found that the January 21, 1999 chiropractic report was duplicative, did not diagnose a subluxation and preceded the alleged recurrence of total disability and consequently had no probative value.[11]

The Office also found that the Merit Systems Protection Board findings did not address the critical question of the case, causal relation and hence was irrelevant to appellant's recurrence claim.[12]

Lastly, appellant's representative argued that the medical evidence of record, especially Dr. Stephen Goll's report,[13] did not support the hearing representative's decision. The Office found this argument unpersuasive as the medical evidence of record had been determined, after a complete and thorough review of the written record, not to establish appellant's alleged July 7, 1999 recurrence of disability, causally related to his May 16, 1997 lumbosacral soft tissue muscle strain injury and as Dr. Goll had changed his earlier opinion, quoted by appellant's representative, on causal relation after reviewing surveillance photographs showing appellant loading plywood into his pick-up truck and stated that his earlier opinion had been based upon appellant's complaints alone.

The Office, after cursory review, found that the medical evidence submitted was either duplicative or cumulative and that the arguments were repetitious or without merit. The Board

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[8] *See Diane Williams,* 47 ECAB 613 (1996) (medical report signed by a nurse and an unsigned medical office problem list did not constitute probative medical evidence).

[9] *See Marta Z. De Guzman*, 35 ECAB 309 (1983); *Jerome Ginsberg*, 32 ECAB 31 (1980) (material which is repetitious or duplicative of that already in the case record is of no evidentiary value and does not constitute a basis for reopening a case).

[10] *See Michael E. Smith*, 50 ECAB 313 (1999); *Yvonne R. McGinnis*, 50 ECAB 272 (1999); *Annie L. Billingsley*, 50 ECAB 210 (1998).

[11] *See Thomas R. Horsfall*, 48 ECAB 180 (1996).

[12] *See Vicky L. Hannis*, 48 ECAB 538 (1997); *Linda I. Sprague*, 48 ECAB 386 (1997).

[13] Dr. Goll was a Board-certified orthopedic surgeon.

now performs another review of the evidence and finds that the Office's determinations were correct. Consequently, the evidence and argument submitted in support of appellant's request for reconsideration of the July 3, 2001 Office decision does not constitute a basis for reopening a claim for further merit review and the Office properly denied appellant's application for reopening his case for a review on its merits.

In the present case, appellant has not established that the Office abused its discretion by denying his request for review of its June 20, 2000 decision under 5 U.S.C. § 8128(a).

Accordingly, the decision of the Office of Workers' Compensation Programs dated July 3, 2001 is hereby affirmed.

Dated, Washington, DC
May 2, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member