U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRADFORD MARK KRUTOFF and DEPARTMENT OF VETERANS AFFAIRS, WEST LOS ANGELES HEALTHCARE CENTER, Los Angeles, CA

Docket No. 03-649; Submitted on the Record;
Issued April 15, 2003

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.

On January 24, 2001 appellant, then a 39-year-old supervisory physicist, filed a claim for occupational disease, alleging that he sustained an environmental illness as a result of working conditions.

In an attached report, appellant stated that he was first aware that his condition was caused by his employment on June 6, 1990 and that "my original claim regarding environmental illness caused by building 500 was denied." He noted that he had been accommodated by the employing establishment "reasonably well … in regards to which building I work at and taking my work outside." He noted, however, that his symptoms persist "on the occasions I do work in building 500." Appellant added that he is sometimes symptomatic when working in building 354, where he has worked for several years, but that the employing establishment accommodated his desire to modify his window so it could "be opened to outside air." He noted that he was filing this claim "to insure that the window remains altered to help reduce the symptoms and that any sick time and medical bills directly related to my having [e]nvironmental [i]llness is properly addressed by [the Office]."

Appellant's employing establishment stated that he first reported his condition in 1995 and that he did not stop work as a result of his exposure.

In support of his claim, appellant submitted a November 22, 2000 report from Dr. Keith R. De Orio, a specialist in family practice, who stated that appellant had an environmental illness or chemical sensitivity syndrome. Dr. De Orio stated that appellant's initial onset was five years prior, that he "works … in building 500 in radiation therapy services," and is exposed to diesel fumes and chemical compounds within his building unit. He noted: "The continued improvement in air circulation because of leaving the windows open in building 500, however, has significantly improved the patient's present physical and mental

condition." Dr. De Orio added that appellant's anatomical and neurological symptoms "are generally intact," that he has no physical incapacity, that laboratory tests were normal, and that a diagnosis of environmental illness "is being made predominately on patient's history." He added that "this syndrome … is much more subjective, and tends to be very difficult to diagnose with any type of lab[otory] or physical examination."

In a report dated February 27, 2001, the employing establishment stated that appellant "has not worked in these areas of building 500 but for 15 to 30 minutes intermittently during the workweek since 1993."

By letter dated March 28, 2001, the Office advised appellant that the information he had submitted for an unspecified condition was insufficient to establish that he sustained an injury as alleged. The Office requested that appellant submit medical records pertaining to his condition including a description of his symptom history, examination and diagnostic test results, a specific diagnosis and his doctor's opinion, with medical reasons, on the cause of his condition. The Office provided a reasonable period for the submission of the requested information.

In a narrative report dated April 27, 2001 and received by the Office on May 2, 2001, appellant stated that he was first aware of his environmental illness in 1990 based on exposure "in building 500 over a long period of time … that resulted in my symptoms." He stated: "Each day that I went to work I was exposed to the environment of building 500," and that "[o]n each occasion, I was exposed for approximately eight hours, five days a week," and that his "last exposure was April 12, 2001."

By decision dated September 14, 2001, the Office denied appellant's claim for an occupational disease.

By letter dated September 13, 2002, appellant requested reconsideration.

By decision dated October 16, 2002, the Office denied review of its September 14, 2001 decision.

The only Office decision before the Board on appeal is dated October 16, 2002, denying appellant's request for reconsideration. Because more than one year has elapsed between the last merit decision dated September 14, 2001, and the filing of this appeal on January 14, 2003, the Board lacks jurisdiction to review the merits of appellant's claim.[1]

The Board finds that the Office properly denied reconsideration of its September 14, 2001 decision.

[1] 20 C.F.R. §§ 501.2(c); 501.3(d)(2); *see John Reese*, 49 ECAB 397, 399 (1998).

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.[2]"

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or his 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 constituting relevant and pertinent new evidence not previously considered by the Office.[3]

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.[4] 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.[5] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[6]

Appellant's September 13, 2002 letter stated that he was undergoing additional tests to rule out asthma, and that "it would be reasonable to keep this file open until these results have been attained." The Office found appellant failed to submit new medical evidence to support his assertion regarding his claim for a work-related environmental illness and denied the request. Appellant presented no medical evidence to support his claim. Appellant did not show that the Office erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by the Office. Further, appellant did not present any relevant and pertinent new evidence not previously considered by the Office.

[2] 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.606(b)(2).

[4] 20 C.F.R. § 10.608(b).

[5] *David J. McDonald*, 50 ECAB 185 (1998).

[6] *Id.*

The decision of the Office of Workers' Compensation Programs dated October 16, 2002 is affirmed.

Dated, Washington, DC
April 15, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member