U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHILISTIA F. WEAVER and U.S. POSTAL SERVICE, POST OFFICE, Bronx, NY

Docket No. 03-1151; Submitted on the Record;
Issued August 26, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for a merit review under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

This is the second appeal in the present case. In a July 24, 2001 decision, the Board set aside the Office's decision dated June 9, 2000.[1] The Board found that the Office abused its discretion in refusing to reopen appellant's claim for a merit review and remanded the case to the Office to reopen the claim for a merit review under 5 U.S.C. § 8128(a).[2] The law and the facts as set forth in the Board's prior decision are incorporated herein by reference.

Subsequent to the Board's July 24, 2001 decision, in a merit decision dated October 11, 2001, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the decision dated June 9, 2000. In a December 29, 2001 letter, appellant requested reconsideration of her claim. Appellant did not submit any additional evidence. By decision dated January 15, 2002, the Office denied appellant's reconsideration request without conducting a merit review on the grounds that the evidence submitted was duplicative and repetitious in nature and insufficient to warrant review of the prior decision.

In an undated letter that was received by the Office on October 17, 2002, appellant requested reconsideration of the Office decision dated January 15, 2002. Appellant submitted a copy of the CA-1 form filed on June 25, 1996, an employing establishment accident report, a note from a customer service supervisor indicating that on February 24, 1998 appellant's right knee gave out on her, a list of doctors appointments prepared by appellant, a notice of a

[1] Docket No. 00-2715 (issued June 9, 2000).

[2] The evidence submitted in support of appellant's request for reconsideration was to establish that she sustained recurrences of disability in March and May 1998.

third-party claim filed by appellant, a report from Dr. I. Martin Levy, a Board-certified orthopedic surgeon, dated September 18, 1998, and excerpts from the Office decision dated October 11, 2001 with appellant's comments.

By decision dated January 2, 2003, the Office denied appellant's reconsideration request on the grounds that the evidence submitted was irrelevant and cumulative in nature and insufficient to warrant review of the prior decision.

The only decision before the Board on this appeal is the Office decision dated January 2, 2003. Since more than one year elapsed from the date of issuance of the Office's October 11, 2001 merit decision to the date of the filing of appellant's appeal on April 2, 2003, the Board lacks jurisdiction to review the prior merit decision.[3]

The Board finds that the Office in its January 2, 2003 decision properly denied appellant's request for reconsideration on the basis that her request for reconsideration did not meet the requirements set forth under 5 U.S.C. § 8128(a).[4]

Under section 8128(a) of the Federal Employees' Compensation Act,[5] the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
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> "(ii) Advances a relevant legal argument not previously considered by [the Office]; or
>
> "(iii) Constitutes relevant and pertinent new evidence not previously considered by the [Office]."[6]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[7]

The merit issue in the instant claim is whether appellant's alleged recurrences of disability of March 24 and May 7, 1998 were causally related to her work-related injury of June 25, 1996. The issue is medical in nature and must be addressed by a physician in the form

[3] *See* 20 C.F.R. § 501.3(d).

[4] *See* 20 C.F.R. § 10.606(b)(2)(i-iii)

[5] 5 U.S.C. § 8128(a).

[6] 20 C.F.R. § 10.606(b).

[7] 20 C.F.R. § 10.608(b).

of a rationalized opinion which establishes a causal relationship between the alleged recurrences of disability to the accepted work-related injury. The Board therefore finds the 1996 CA-1 form, the accident report, the customer service representative's note, the list of doctors' appointments and the third-party claim notice are irrelevant and insufficient to warrant merit review.

Appellant, however, also submitted a report from Dr. Levy dated September 18, 1998. However, this report is similar to his previous reports of record dated May 6, June 4, August 12 and August 14, 1998 which noted appellant's persistent complaints of pain, stiffness and swelling of the right knee and ankle. The Board, therefore, finds this evidence to be cumulative and repetitive of his other reports previously considered by the Office in its October 11, 2001 decision[8] and found deficient. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review. As appellant did not show that the Office erroneously applied or interpreted a point of law, advance a point of law or fact not previously considered by the Office, or submit relevant and pertinent evidence not previously considered by the Office,[9] the Office properly denied her request for reconsideration.[10]

The decision of the Office of Workers' Compensation Programs dated January 2, 2003 is hereby affirmed.

Dated, Washington, DC
August 26, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[8] 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; *see Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[9] 20 C.F.R. § 10.606(b).

[10] The Board notes that appellant submitted additional evidence with her appeal to the Board. However, the Board may not consider this evidence on appeal as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).