U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM G. JAKSEVICIUS and U.S. POSTAL SERVICE,
POST OFFICE, Oakland Park, FL

Docket No. 01-1539; Submitted on the Record;
Issued March 1, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

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).

This case has previously been on appeal before the Board. By decision dated March 15, 2000, the Board found that the Office improperly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a). The Board found that a March 18, 1998 report from appellant's attending physician, Dr. Jeffrey B. Cantor, was relevant to the issue on which reconsideration was sought: whether appellant refused suitable work in March 1997. The Board reversed the Office's July 23, 1998 decision and remanded the case to the Office for a decision on the merits of the issue of refusal of suitable work.[1]

By decision dated April 6, 2000, the Office found that the March 18, 1998 report from Dr. Cantor was insufficient to warrant modification of its prior decisions.

By letter dated March 1, 2001, appellant requested reconsideration and contended that "he was unable to perform the duties due to his medical condition." He submitted a February 20, 2001 report from Dr. Cantor, which stated:

> "[Appellant] was under my care following spine surgery. He was last seen by me September 26, 1997 at which time he was not better. [Appellant] had a gross nonunion with some evidence of stenosis proximal to his lumbar fusion. Treatment options were discussed including the possibility of a surgical reexploration and fusion with bone stimulator placement. He understood that there would be about a 50 percent chance that this would give him any improvement and a 15 percent chance that it could worsen. At that time, until the problem could be resolved he was on a 'no work' status."

[1] Docket No. 99-51.

By decision dated March 8, 2001, the Office found that the additional evidence was essentially similar to prior reports from Dr. Cantor and was insufficient to warrant review of the Office's prior decisions.

The only Office decision before the Board on this appeal is the Office's March 8, 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 6, 2000 and the filing of appellant's appeal on May 16, 2001, the Board lacks jurisdiction to review the merits of appellant's claim.[2]

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 --
>
> (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 0.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.[3] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[4]

The February 20, 2001 report from Dr. Cantor that appellant submitted with his March 1, 2001 request for reconsideration consisted almost entirely of material excerpted from the September 26, 1997 report, which was already considered by the Office in a prior decision. The only new statement in the February 20, 2001 report was Dr. Cantor's statement, "At that time, until the problem could be resolved he was on a 'no work' status." This statement does not address appellant's ability to work on April 26, 1997, the date the Office terminated his compensation for refusing suitable work and is, therefore, not relevant and insufficient to require

[2] 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 final decision being appealed.

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

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

the Office to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

The March 8, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
March 1, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member