

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA L. STORY and U.S. POSTAL SERVICE,
POST OFFICE, Alvin, Tex.

*Docket No. 97-122; Oral Argument Held December 9, 1997;
Issued February 11, 1998*

Appearances: *Diana Lyn Gamboa*, for appellant; *Catherine P. Carter, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

The only Office decision before the Board on this appeal is the Office's May 31, 1996 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 May 16, 1995 and the filing of appellant's appeal on September 11, 1996, the Board lacks jurisdiction to review the merits of appellant's claim.¹

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."

¹ 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.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) 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.² Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.³

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

In her May 13, 1996 request for reconsideration, appellant contended that the employing establishment erred in its initial handling of her claim and in not requiring her to go to the hospital on the date of her employment injury. These contentions do not show that the Office erroneously applied or interpreted a point of law nor do they advance a point of law or fact not previously considered by the Office. These contentions were previously raised by appellant in a February 21, 1995 letter, and they do not relate to the issue on which the case was decided: whether the medical evidence shows that the December 7, 1992 employment injury caused appellant's disability beginning January 4, 1993.

Also not relevant to this issue are the two medical reports appellant submitted with her May 13, 1996 request for reconsideration. A neuropsychological examination from Dr. Jon F. DeFrance, a psychologist, based on testing on November 29 and December 29, 1994 and on a family conference on February 6, 1995 concludes that appellant has "a neuropsychological profile typical of an unresolved post-traumatic stress disorder (with agoraphobic features) and a chronic pain syndrome," but does not state that these conditions are causally related to appellant's December 7, 1992 employment injury. The October 4, 1995 report⁴ from Dr. Muriel D. Owens, a chiropractor, contains a history of the December 7, 1992 injury, a statement that appellant is disabled, and a diagnosis of several sUBLUXATIONS of the spine. It does not contain an opinion that the diagnosed conditions or appellant's disability are causally related to the December 7, 1992 employment injury. Without statements on causal relation -- the issue on which the case was decided, the newly submitted medical reports are not sufficient to require that the Office reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

² *Eugene F. Butler*, 36 ECAB 393 (1984).

³ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁴ Although the Office's May 13, 1996 decision indicates that only pages 2 and 3 of a report from Dr. Owens were received, the Board notes that the record also contains the first page of an October 4, 1995 report from Dr. Owens, which is stamped by the Office as received the same day as the Office received appellant's May 13, 1996 request for reconsideration and the second and third pages of a report from Dr. Owens. The Board considers these three pages, a three-page report from Dr. Owens dated October 4, 1995.

The decision of the Office of Workers' Compensation Programs dated May 31, 1996 is affirmed.

Dated, Washington, D.C.
February 11, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member