

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHELIA L. BULLER and U.S. POSTAL SERVICE,  
POST OFFICE, Sedalia, Mo.

*Docket No. 96-1837; Submitted on the Record;  
Issued June 9, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that her December 23, 1994 left thumb surgery was causally related to her accepted October 31, 1994 employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for a merit review on January 29, 1996.

In the present case, the Office accepted that appellant sustained a left thumb contusion when she bumped or jammed her thumb on October 31, 1994, while avoiding attacking dogs in the course of her federal employment. Pursuant to appellant's request for surgery on her left thumb, the Office advised appellant to submit rationalized medical evidence addressing the relationship between the surgical procedural and her accepted employment injury. Appellant subsequently indicated that she sustained a similar surgical procedure on her right hand in May 1994.

On November 17, 1994 Dr. Barry J. Gainor, a Board-certified orthopedic surgeon, diagnosed mild to moderate pan trapezial osteoarthritis of the basal joint of the thumb with some degree of subluxation. He noted appellant had a history of a basal joint arthroplasty of her right thumb in May 1994. Dr. Gainor indicated that appellant was advised of conservative treatment measures, but that appellant wished to proceed with surgery.

On December 9, 1994 the Office requested that Dr. Gainor provide a rationalized opinion addressing whether appellant's requested surgery was related to her October 31, 1994 accepted employment injury.

By letter dated December 9, 1994, Dr. Gainor indicated that appellant's duties contributed to the development of arthritis at the basal joint of her left thumb. He stated that the October 31, 1994 employment incident "probably flared up this underlying condition."

On December 23, 1994 Dr. Gainor performed a resectional arthroplasty of the carpometacarpal joint of the left thumb with rolled tendon interposition. Dr. Gainor had diagnosed osteoarthritis of the carpometacarpal joint of the left thumb.

Appellant subsequently provided information concerning her right thumb surgery. Dr. Marcia L. Hixon, a Board-certified orthopedic surgeon, indicated that he performed surgery on appellant's right thumb as a result of osteoarthritis in the appendage on May 15, 1993.

On August 1, 1995 the Office medical adviser indicated that the osteoarthritic change in appellant's left thumb was "not caused, aggravated, accelerated, or precipitated" by her accepted employment injury. He noted that appellant was predisposed to osteoarthritic changes affecting the thumb joints. He, therefore, stated that the surgery performed by Dr. Gainor on December 23, 1994 was not related to the October 31, 1994 accepted employment injury.

By decision dated September 18, 1995, the Office denied appellant's claim, because the evidence failed to establish that the claimed condition, osteoarthritis, or the surgical procedure was causally related to the October 31, 1994 accepted injury.

Appellant subsequently requested reconsideration. In support, appellant submitted a November 21, 1995 letter, from Dr. Hixon indicating that she recorded no complaints of left thumb pain, weakness, or disability when she last examined appellant on July 23, 1993. Appellant also resubmitted Dr. Gainor's December 9, 1994 report.

By decision dated January 29, 1996, the Office denied appellant's request for review because the evidence submitted in its support was cumulative and immaterial in nature.

The Board initially finds that appellant has not established that her December 23, 1994 left thumb surgery was causally related to her accepted employment injury.

Where appellant claims a recurrence of disability to an accepted employment-related injury, she has the burden of establishing by the weight of the reliable probative evidence that the recurrence of the condition, for which she seeks compensation is causally related to the accepted employment injury.<sup>1</sup> As part of this burden, appellant must submit rationalized medical opinion evidence based on a complete and accurate factual and medical background showing a causal relationship between the current condition and the accepted employment-related injury.

In this case, Dr. Gainor provided the only opinion supporting that appellant's December 23, 1994 surgery, was related to her October 31, 1994 accepted employment injury. On December 9, 1994 Dr. Gainor stated that the October 31, 1994 employment incident "probably flared up this underlying condition." Because Dr. Gainor's opinion is equivocal, however, it is entitled to little weight.<sup>2</sup> Appellant, therefore, failed to meet her burden of showing a causal relationship between her December 23, 1994 surgery and her accepted employment-related injury.

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<sup>1</sup> See *Henry L. Kent*, 34 ECAB 361 (1982); *Dennis E. Twadzik*, 34 ECAB 536 (1983).

<sup>2</sup> *Geraldine H. Johnson*, 44 ECAB 745 (1993).

The Board also finds that the Office properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a) of the Federal Employees' Compensation Act.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or 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.<sup>3</sup> 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.<sup>4</sup> Evidence that does not address the particular issue involved, in this case the causal relationship between appellant's accepted left thumb contusion and subsequent left thumb surgery, also does not constitute a basis for reopening a case.<sup>5</sup>

In this case, appellant submitted two medical reports to support her request for reconsideration. This evidence included a November 21, 1995 letter, from Dr. Hixson and a December 9, 1994 report from Dr. Gainor. Dr. Hixson only indicated that there were no complaints of left thumb pain, weakness, or disability when appellant was examined on July 23, 1993. This report cannot constitute a basis for reopening the case, because it does not address whether a causal relationship existed between appellant's December 23, 1994 surgery and her accepted injury. Moreover, the Office previously considered Dr. Gainor's December 9, 1994 report. Because the evidence appellant submitted in support of her application for review was either irrelevant or previously considered, the Office properly found that it did not constitute a basis for reopening the case.

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<sup>3</sup> 20 C.F.R. § 10.138(b)(2).

<sup>4</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

<sup>5</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decisions of the Office of Workers' Compensation Programs dated January 29, 1996 and September 18, 1995 are affirmed.

Dated, Washington, D.C.  
June 9, 1998

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member