

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWRENCE L. RICHARDS and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Southbridge, Mass.

*Docket No. 96-2330; Submitted on the Record;
Issued June 17, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's January 23, 1996 request for reconsideration under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record in the present appeal and finds that the Office properly denied appellant's January 23, 1996 request for reconsideration under section 8128(a).

On March 9, 1993 appellant, a field representative, filed a traumatic injury claim (Form CA-1) alleging that on March 8, 1993 he experienced pain in the lower back and down the right leg when he bent over and picked up two full briefcases. Appellant did not stop work.

By letter dated May 10, 1994, the Office advised appellant to submit medical evidence supportive of his claim. In response, appellant submitted medical evidence.

By decision dated September 8, 1994, the Office found the evidence of record insufficient to establish that appellant sustained an injury as alleged. In an accompanying memorandum, the Office found the evidence of record insufficient to establish that the alleged incident occurred in the time, place and in the manner alleged. The Office also found the medical evidence of record insufficient to establish that appellant sustained a medical condition caused by factors of his federal employment.

In a November 16, 1994 letter, appellant requested reconsideration of the Office's decision accompanied by medical evidence.¹

¹ In a November 20, 1994 letter, appellant requested an oral hearing before an Office representative. Appellant stated that he was unable to submit medical evidence supportive of his claim within the 30 day time limitation. Appellant then requested a waiver of the time limitation.

By decision dated February 15, 1995, the Office denied modification of its prior decision.

In a January 23, 1996 letter, appellant requested reconsideration of the Office's decision.

By decision dated April 11, 1996, the Office denied appellant's request for reconsideration without a merit review of the claim on the grounds that the evidence submitted was found to be immaterial and thus insufficient to warrant a review of the prior decision.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.² Inasmuch as appellant filed his appeal with the Board on July 17, 1996, the only decision properly before the Board is the Office's April 11, 1996 decision denying appellant's request for reconsideration.

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.³ 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 requirements, the Office will deny the application for review without review of the merits of the claim.⁴

In support of his January 23, 1996 request for reconsideration, appellant submitted the May 12, 1995 report of Dr. Cheryl J. Houston, a chiropractor, indicating a history of appellant's injury and medical treatment. Dr. Houston further indicated that appellant had neck pain due to a C5-6 disc herniation. Dr. Houston stated that chiropractic treatment afforded temporary relief of symptomatology with the return of symptoms upon provocation. Dr. Houston concluded that appellant was partially disabled from participation in usual activities. Under section 8101(2) of the Act,⁵ "[t]he term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation of the spine as demonstrated by x-ray to exist and subject to regulation by the Secretary."⁶ If a chiropractor's reports are not based on a diagnosis of subluxation as demonstrated by x-ray to exist, they do not constitute competent medical evidence to support a claim for compensation.⁷ Dr. Houston's report does not diagnose subluxation of the spine as

² *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

³ 20 C.F.R. § 10.138(b)(1); *Thankamma Mathews*, 44 ECAB 788 (1993).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ 5 U.S.C. § 8101(2); *see also* 20 C.F.R. § 10.400(a); *Robert J. McLennan*, 41 ECAB 599 (1990); *Robert F. Hamilton*, 41 ECAB 431 (1990).

⁷ *Loras C. Dignann*, 34 ECAB 1049 (1983).

demonstrated by x-ray. Inasmuch as Dr. Houston has failed to diagnose subluxation of the spine by x-ray, she does not qualify as a physician under section 8101(2).⁸ Therefore, her report does not constitute competent medical evidence to support a claim for compensation.⁹

Appellant has failed to establish that the Office abused its discretion in its April 11, 1996 decision by denying his request for a review on the merits of its September 8, 1994 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, that he advanced a point of law or a fact not previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office.

The April 11, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
June 17, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁸ *Milton E. Bentley*, 32 ECAB 1805 (1981).

⁹ *Theresa K. McKenna*, 30 ECAB 702 (1979).