

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SARA M. TOLBERT, claiming as widow of HURSHIEL D. TOLBERT and
DEPARTMENT OF VETERANS AFFAIRS, DUBLIN MEDICAL CENTER, Dublin, Ga.

*Docket No. 97-22; Submitted on the Record;
Issued October 21, 1998*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's application for review under 5 U.S.C. § 8128.

On February 21, 1974 the employee, then a 53-year-old general supply specialist, filed a notice of injury or occupational disease (Form CA-1 & 2) alleging that his chest pains were due to his employment. The Office accepted the employee's claim for myocardial infarction on September 18, 1974. Appellant retired on disability retirement effective November 7, 1974.

On November 1, 1994 appellant, the deceased employee's widow, filed a claim for death benefits attributing the employee's death on August 29, 1994 to the employee's accepted employment related myocardial infarction.¹ On the reverse of the form, Dr. Joseph E. Carruth attributed appellant's death primarily to the employee's "severe long-standing coronary heart disease which was also the cause of his myocardial infarction in 1974."

In a decision dated May 30, 1995, the Office denied appellant's claim on the grounds that the evidence failed to establish that the employee's death was causally related to the accepted employment injury.

By fax dated May 29, 1996, appellant, through counsel, requested reconsideration of the denial of her claim for death benefits.² Appellant restated the history of the employee's claim and noted that the employee received compensation benefits for approximately 20 years. Appellant admits that the employee's death was due to coronary artery disease which she alleges the Office paid benefits for.

¹ The employee died on August 29, 1994. The death certificate attributed the employee's death to cardiovascular arrest due to cardiac ischemia due to atherosclerotic heart disease.

² Appellant mailed a hard copy of the letter along with evidence already contained in the record.

In a decision dated June 6, 1996, the Office denied appellant's application for review, finding that appellant had not submitted relevant and material evidence sufficient to merit a review of the prior decision.

The Board finds that the Office did not abuse its discretion by denying merit review pursuant to 5 U.S.C. § 8128.

The only decision before the Board on this appeal is the June 6, 1996 Office decision which found that appellant, in her request for reconsideration, had not submitted relevant or material evidence sufficient to warrant review of the Office's May 30, 1995³ decision. Since more than one year has elapsed between the issuance of the May 30, 1995 decision and September 5, 1996, the date appellant filed her application with the Board, the Board lacks jurisdiction to review the May 30, 1995 decision.⁴

The Office has issued regulations regarding its review of decisions under section 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 her claim by written request to the Office identifying the decision and the specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

“(i) Showing that the Office erroneously applied or interpreted a point of law, or

“(ii) Advancing a point of law or fact not previously considered by the Office, or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”⁵

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.⁶ 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.⁷ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁸

In support of her request for reconsideration, appellant's attorney submitted a detailed history of the case. Appellant argued that since the employee continued to receive benefits after reports indicated that his myocardial infarction had healed that therefore the Office accepted the

³ The Office erroneously noted the date as “1996” and not “1995.”

⁴ See 20 C.F.R. § 501.3(d)(2).

⁵ 20 C.F.R. § 10.138(b)(1).

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ *Daniel Deparini*, 44 ECAB 657 (1993).

⁸ *Id.*

employee's continuing disability to be due to the progression of his coronary artery disease. Appellant further argues that she is entitled to benefits as the Office continued to pay benefits to the employee after medical evidence established that his myocardial infarction had healed; the employee's continuing disability and death were due to his coronary artery disease. However, the issue of causal relationship is a medical question which can only be resolved by the submission of medical opinion evidence.⁹ Furthermore, as the Office noted the employee's treating physician attributed his death to progressive coronary artery disease which was not an accepted condition. Thus, appellant's arguments do not constitute relevant and probative evidence supporting the issue of causation between factors of the employee's federal employment and his death which the Office previously found was lacking in appellant's case. The Office, therefore, did not abuse its discretion in refusing to reopen and review appellant's claim on the merits.

The decision of the Office of Workers' Compensation Programs dated June 6, 1996 is hereby affirmed.

Dated, Washington, D.C.
October 21, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ *Ronald M. Cokes*, 46 ECAB 967 (1995).