

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JIMMY R. MEDLEY and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, Wash.

*Docket No. 97-1069; Submitted on the Record;
Issued April 12, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability causally related to his accepted April 26, 1994 lumbar strain; and (2) whether the Office of Workers' Compensation Programs, by its January 2, 1997 decision, abused its discretion by refusing to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128.

In the present case, the Office accepted appellant's claim for an April 26, 1994 lumbar strain. On January 11, 1995 appellant alleged that he sustained a recurrence of disability identified as "ongoing" and described as numbness and shooting pain in the legs, pain in knees and groin and pain in hips. The Office denied appellant's recurrence claim by decision dated March 23, 1995 on the grounds that appellant failed to establish that he had a condition which was causally related to his April 26, 1994 accepted lumbar strain. By decision dated February 23, 1996, an Office hearing representative affirmed the denial of the claim.

The Board has given careful consideration to the issues involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the Office hearing representative, dated February 23, 1996, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative. The hearing representative properly determined that appellant was alleging that he sustained a recurrence of disability regarding a hip condition. The hearing representative also properly concluded that based upon the evidence of record appellant failed to submit sufficient medical evidence to establish a recurrent hip condition or disability causally related to his accepted April 26, 1994 lumbar strain.

Following the issuance of the February 23, 1996 decision, on November 18, 1996 appellant's representative requested reconsideration and submitted office notes dated December 7, 1994 by Dr. Lynn Staker; employing establishment health records dated May 27, 1994 and June 1, 1995; and a May 16, 1995 radiologic examination report by Dr. John W.

Crowley, a Board-certified radiologist. The documents were previously of record. Appellant's representative argued that physical therapy notes belonging to another person were incorrectly placed in appellant's record leaving the wrong impression that he had leg shortening and wore a lift in his shoe and that his physician used a wrong file number when submitting bills.¹ This argument was presented at the hearing as well as in correspondence from appellant and his physician. The Office determined by decision dated January 2, 1997 that the argument presented was previously considered and no new and relevant evidence was submitted regarding the issue of whether appellant's hip conditions and degenerative disc disease are causally related to the accepted April 26, 1994 lumbar strain. Therefore, the request for reconsideration was insufficient to warrant review of the prior decision.

The Office's regulations at 20 C.F.R. § 10.138(b)(1) provide that a claimant may obtain a 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 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.²

The Board finds that appellant has not established that the Office abused its discretion in its January 2, 1997 decision by denying his request for a review of the merits of its February 23, 1996 decision under section 8128(a) of the Federal Employees' Compensation 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 new and relevant medical evidence not previously consider by the Office.

¹ In order to be entitled to reimbursement for medical expenses, treatment received must have been for a condition that was related to the accepted April 26, 1994 lumbar strain.

² 20 C.F.R. § 10.138(b)(2); *Norman W. Hanson*, 45 ECAB 430 (1994).

Accordingly, the decisions of the Office of Workers' Compensation Programs dated January 2, 1997 and February 23, 1996 are affirmed.

Dated, Washington, D.C.
April 12, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member