

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of IZETTA ROBERTS and U.S. POSTAL SERVICE,  
POST OFFICE, Cleveland, Ohio

*Docket No. 98-1624; Submitted on the Record;  
Issued February 9, 1999*

---

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying merit review of the claim pursuant to section 8128 of the Federal Employees' Compensation Act.

In the present case, the Office has accepted that appellant, a mail carrier, sustained acute lumbosacral myofasciitis, right sciatic radiculitis and herniated lumbar disc at L5-S1 as a result of a fall in the performance of duty on December 2, 1974. On January 2, 1996 the Office terminated appellant's compensation benefits under 5 U.S.C. § 8106(c)(2) on the grounds that appellant had refused suitable work. On January 28, 1997 the Office denied modification of the termination of appellant's compensation benefits, after merit review.

Appellant again requested that the Office reconsider her case on January 23, 1998. In support of this request for reconsideration appellant submitted additional reports from her treating physicians, Drs. Gerald M. Yosowitz and Joseph P. Hanna. The Office denied appellant's application for review on February 12, 1998.

The Board has duly reviewed the case record and finds that the Office did not abuse its discretion in this case.

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 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>1</sup>

---

<sup>1</sup> 20 C.F.R. § 10.138(b)(2); *Norman W. Hanson*, 45 ECAB 430 (1994).

Appellant did not attempt to show that the Office erroneously applied or interpreted a point of law, nor did she advance a point of law or fact not previously considered by the Office, but rather she submitted additional medical reports not previously of record. In determining what is relevant and pertinent evidence not previously considered by the Office, the Board has held that evidence which does not address the particular issue involved or evidence which is repetitive or cumulative of that already in the record does not constitute new relevant and pertinent evidence and is therefore not a basis for reopening a case.<sup>2</sup>

Both Dr. Yosowitz's February 19, 1997 report and Dr. Hanna's January 28, 1998 report were cumulative of reports they had submitted to the Office prior to the Office's last merit review of the claim. In this regard, the Board finds that Dr. Yosowitz's February 19, 1997 report offers the same conclusions as his January 24, 1996 report wherein he also opined that appellant remained unable to return to any sustained or gainful employment. Dr. Hanna's January 28, 1998 report was repetitive and cumulative of his December 20, 1996 report. In both reports Dr. Hanna indicated that appellant had upper extremity limitation predominately because of pain from her osteoarthritic shoulder and that her pain was significant enough to make repetitive motion above the level of her shoulder nearly impossible. He concluded in both reports that appellant's shoulder discomfort limited the amount of lifting she could perform to less than 10 pounds for 2 hours each day.

As appellant did not file an appeal within one year of the Office's January 2, 1996 merit decision, the Board does not have jurisdiction to review the termination of appellant's compensation.<sup>3</sup> The Board is limited to review of whether the Office abused its discretion by refusing to reopen the claim for merit review. The evidence appellant submitted in support of her request for reconsideration from Drs. Yosowitz and Hanna was repetitive and cumulative. The Office was not required to reopen the case and the Office did not abuse its discretion in this case.

---

<sup>2</sup> *James E. Salvatore*, 42 ECAB 309 (1991).

<sup>3</sup> 20 C.F.R. § 501(3)(d).

The decision of the Office of Workers' Compensation Programs dated February 12, 1998 is hereby affirmed.

Dated, Washington, D.C.  
February 9, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member