

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGORY W. VAN HORN and U.S. POSTAL SERVICE,
POST OFFICE, Huntington, N.Y.

*Docket No. 97-1844; Submitted on the Record;
Issued May 19, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

On January 20, 1994 appellant, a 36-year-old postal clerk, filed a Form CA-2 claim for benefits. Appellant stated that he had previously sustained a work injury, which resulted in his having his right thumb fused together and that as a result he had been on limited duty since 1989. Appellant claimed that beginning in 1989, the repetitive sorting of mail caused pain in his right hand and wrist, which gradually worsened until it became constant; and that he first became aware this was a condition caused or aggravated by his employment on October 16, 1992 when he sought medical attention.

In a report dated April 29, 1993, Dr. Peter C. Altner, a Board-certified orthopedic surgeon, related that appellant had undergone additional surgery on his right hand on January 8, 1993 and had been placed on special assignment at work which apparently aggravated his right hand/wrist condition.

In a report dated November 30, 1993, Dr. Steven Shoen, a Board-certified surgeon and a specialist in plastic surgery, advised that following appellant's surgery in January 1993, he had developed a reflex sympathetic dystrophy condition and persistent pain in his right hand and Dr. Shoen stated:

"It is my impression that although [appellant's] bony injuries preceded his employment at the postal service, that his duties at his job including sorting and stamping mail exacerbated the pain that he is now experiencing. Frequent and persistent gripping of objects leads to considerable wear and tear on the joint surfaces of the first ray of the involved hand. It is further my belief that the activities that his employment required frequent pronation and supination of the

right forearm as well as other motions which resulted in a cubital tunnel type syndrome.”

In a letter dated January 26, 1994, the employing establishment denied appellant’s request for limited duty in light of its receipt of the January 20, 1994 claim for benefits based on occupational disease. The employing establishment noted that appellant had not worked since December 3, 1992.

By letter dated April 26, 1994, the employing establishment controverted the claim, asserting that appellant did not sustain his injury in the performance of duty.

By letters dated June 17, 1994, the Office scheduled appellant for a second opinion evaluation with Dr. Edmund A.C. Stewart, a Board-certified orthopedic surgeon, to determine whether appellant’s right hand/wrist condition was causally related to factors of his federal employment.

In a report dated July 1, 1994, Dr. Stewart reviewed appellant’s medical history and the statement of accepted facts, took x-rays of appellant’s right hand and stated findings on examination. Dr. Stewart diagnosed a post Bennett’s fracture of the first metacarpal, right hand, and a postoperative first metacarpal-carpal joint, and found no objective evidence of any orthopedic disability which would hamper appellant from being able to carry out his duties for the employing establishment in a light-duty capacity. Dr. Stewart advised that appellant’s light-duty assignment of sorting and stamping mail “in no way” aggravated or altered his preexisting right hand condition.

By letter dated July 15, 1994, the Office advised appellant that his claim had been accepted for reflex sympathetic dystrophy, right hand.

By decision dated October 14, 1994, the Office rescinded its acceptance of appellant’s claim.¹ The Office stated that it had accepted the claim for reflex sympathetic dystrophy of the right hand before the results of the second opinion examiner, Dr. Stewart, had been obtained and that, having reviewed Dr. Stewart’s July 1, 1994 report, which represented the weight of the medical evidence, it had concluded that the evidence of file did not support the acceptance of the condition as caused or aggravated by factors of employment.²

In a letter postmarked November 12, 1994, appellant requested an oral hearing, which was held on May 22, 1995.

¹ The Office noted that appellant had filed a claim for a herniated disc based on an injury which occurred on August 12, 1989 which had been accepted, and that it had also accepted a recurrence claim on October 20, 1990. The Office stated that appellant had been absent from work from September 2, 1989 to May 16, 1990, and had worked part time until September 30, 1990.

² The Office stated that appellant had initially been hired by the employing establishment in 1986 as a disabled veteran with a fusion of his right hand, and had been assigned to work as a laborer loading and unloading mail trucks until 1989, when he commenced work on limited duty as a clerk sorting mail at the post office. The Office stated that appellant set his own pace in this job and could rest between activities.

By decision dated November 22, 1995, the Office affirmed its previous decision, finding that appellant failed to submit sufficient medical evidence to establish that factors of his federal employment aggravated his right hand/wrist condition.

By letter dated November 21, 1996, appellant requested reconsideration. In support of his request, appellant submitted several medical reports, all of which had been reviewed by the Office in previous decisions.

By decision dated January 24, 1997, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board holds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

The only decision before the Board on this appeal is the January 24, 1997 Office decision, which found that the evidence submitted in support of appellant's request for reconsideration was insufficient to warrant review of its prior decision. Since the January 24, 1997 decision, is the only decision issued within one year of the date that appellant filed his appeal with the Board, April 23, 1997, this is the only decision over which the Board has jurisdiction.³

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain 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.⁴ 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.⁵ 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.⁶

In the present case, appellant failed to show that the Office erroneously applied or interpreted a point of law or fact not previously considered by the Office; nor did he advance a point of law not previously considered by the Office. Neither has he submitted relevant and pertinent evidence not previously considered by the Office. The issue in this case, is medical in nature and must be addressed by a physician; however, appellant did not submit any new medical evidence with his request for reconsideration. Additionally, appellant's November 21, 1996 letter, did not show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Although appellant

³ See 20 C.F.R. § 501.3(d)(2).

⁴ 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ See *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

generally contended that his duties as a limited-duty mail clerk from 1989 to October 16, 1992 aggravated his preexisting right hand/wrist condition, rendering him totally disabled, appellant failed to submit new and relevant medical evidence in support of this contention. Accordingly, the Office properly refused to reopen appellant's claim for a review on the merits.

The decision of the Office of Workers' Compensation Programs dated January 24, 1997 is, therefore, affirmed.

Dated, Washington, D.C.
May 19, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member