

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BIRJEANIA BROWN and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

*Docket No. 99-76; Submitted on the Record;
Issued May 16, 2000*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration of her claim under 5 U.S.C. § 8128.

On March 19, 1993 appellant, then a 34-year-old clerk, filed a claim for a traumatic injury occurring on that date in the performance of duty. The Office accepted appellant's claim for lumbosacral strain, cervical strain and a small disc herniation at L4-5. Appellant stopped work and did not return.¹

By decision dated July 22, 1996, the Office terminated appellant's compensation effective July 26, 1996 on the grounds that she had no further condition or disability after that date causally related to her March 19, 1993 employment injury.

In a letter dated November 11, 1996, appellant, through her representative, requested reconsideration of her claim. The Office, in a decision dated November 15, 1996, denied modification of its prior decision. By letter dated March 17, 1997, appellant requested reconsideration, which the Office denied in a merit decision dated April 18, 1997.

On April 13, 1998 appellant, through her attorney, again requested reconsideration of her claim. By decision dated June 24, 1998, the Office denied reconsideration on the grounds that the evidence submitted was immaterial and thus insufficient to warrant review of the prior decision.²

¹ Appellant's appointment with the employing establishment as a transitional clerk expired April 13, 1993.

² The Office indicated that appellant, in a letter dated April 13, 1998, had requested reconsideration of its decision dated April 18, 1998 rather than April 18, 1997; however, this appears to be a typographical error.

The Board has duly reviewed the case record and finds that the Office did not abuse its discretion in refusing to reopen appellant's case for further review of the merits of her claim under section 8128.

The only decision over which the Board has jurisdiction is the Office's June 24, 1998 decision denying appellant's request for a review of the merits of the case. Because more than one year has elapsed between the issuance of the Office's last merit decision dated April 18, 1997 and September 14, 1998, the date appellant filed her appeal before the Board, the Board lacks jurisdiction to review the decision dated April 18, 1997.³

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 his or 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.”⁴

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.⁵ Evidence that repeats or duplicates evidence already in the case record has no evidentiary values and does not constitute a basis for reopening a case.⁶ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁷

In the present case, the Office terminated appellant's compensation effective July 26, 1996 on the grounds that the weight of the medical opinion evidence established that she had no further employment-related condition or disability. In support of her request for reconsideration, appellant submitted an office visit note dated September 8, 1997 from Dr. Errol J. Stern, a Board-certified orthopedic surgeon. Dr. Stern related that appellant had “no clinical radicular symptomatology now but she has a significant amount of low back pain. She has some neck pain as well.” Dr. Stern indicated that he was “not keeping her off work.” He requested authorization for a magnetic resonance imaging (MRI) study. As Dr. Stern did not address the

³ See 20 C.F.R. §§ 501.2(c), 501.3(d).

⁴ 20 C.F.R. § 10.138(b)(1).

⁵ See 20 C.F.R. § 10.138(b)(2).

⁶ *Daniel Deparini*, 44 ECAB 657 (1993).

⁷ *Id.*

pertinent issue in the present case, which is whether appellant has any further condition or disability causally related to her accepted employment injury, his report is irrelevant and thus insufficient to warrant a reopening of the claim.

Appellant further submitted a prescription from Dr. David H. Gillis, an orthopedic surgeon, for a transcutaneous electrical nerve stimulator unit and copies of her authorization of representation; however, this information is without relevance to the issue of whether appellant has any continuing employment-related disability. The Board has held that the submission of evidence, which does not address the particular issue involved does not constitute a basis for reopening a case.⁸

As appellant has failed to show that the Office erroneously applied or interpreted a point of law, advanced a point of law or a fact not previously considered by the Office, or submitted relevant and pertinent evidence not previously considered by the Office, she has not met her burden of proof to establish that the Office abused its discretion in denying her request for a review of her claim on the merits.

The decision of the Office of Workers' Compensation Programs dated June 24, 1998 is hereby affirmed.

Dated, Washington, D.C.

May 16, 2000

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).