

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HOMER F. JONES and U.S. POSTAL SERVICE,
POST OFFICE, Sacramento, CA

*Docket No. 99-1535; Submitted on the Record;
Issued April 24, 2001*

DECISION and ORDER

Before DAVID S. GERSON, 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 claim for consideration of the merits on March 11, 1998.

This case has previously been before the Board on appeal. In its November 25, 1997 decision, the Board found that appellant had failed to meet his burden of proof in establishing a recurrence of total disability on May 24, 1994 and adopted the decision of the hearing representative dated May 2, 1995 which found that the record did not contain rationalized medical opinion evidence in support of appellant's claim.¹

Following the Board's November 25, 1997 decision, appellant through his representative requested reconsideration from the Office on February 26, 1998. Appellant submitted additional medical evidence in support of his request. By decision dated March 11, 1998, the Office declined to reopen appellant's claim for consideration of the merits, finding that the evidence submitted was cumulative and repetitious of evidence already included in the record at the time of the Board's decision.²

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by

¹ Docket No. 95-2791.

² Following the Office's March 11, 1998 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board will not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.³ 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.⁴

In support of his request for reconsideration, appellant submitted a report dated February 3, 1998 from Dr. Deborah von Brecht, a Board-certified family practitioner and appellant's attending physician. Dr. von Brecht noted appellant's history of injury and stated that she treated him for depression due to chronic pain, a condition accepted by the Office. Dr. von Brecht stated appellant's symptoms continued to progress and worsen and that in May 1994 appellant's depression and pain increased. She stated, "The disability was initiated due to the progression of ongoing disease rather than a discrete incident exacerbating the disease." Dr. von Brecht concluded, "[Appellant] was placed on disability in May 1994 due to increasing depression and increasing debilitating pain. As a result of long-standing problems with back with most likely progressive degeneration of the back and spinal support."

This report is similar to others completed by Dr. von Brecht already contained in the record. On September 2, 1994 she attributed his anxiety and depression to an increase in back pain. Dr. von Brecht found that he was totally disabled. Both the report dated February 3, 1998 submitted on reconsideration and the September 2, 1994 report from Dr. von Brecht, provide an opinion on the causal relationship between appellant's emotional condition, his back condition and his recurrence of total disability.

The Board found that appellant failed to establish a recurrence of total disability as he failed to submit the necessary rationalized medical opinion evidence. The February 3, 1998 report from Dr. von Brecht is not relevant to this issue as she failed to provide any medical rationale to support her opinion on causal relationship which was already contained in the record.

As appellant has failed to submit the necessary relevant new evidence, the Office properly declined to reopen his claim for review of the merits.

³ 20 C.F.R. § 10.138(b)(1).

⁴ 20 C.F.R. § 10.138(b)(2).

The March 11, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 24, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member