

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BECKY CHASTEEN and U.S. POSTAL SERVICE,  
POST OFFICE, Highlands, TX

*Docket No. 99-1916; Submitted on the Record;  
Issued May 4, 2001*

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DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

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

On December 16, 1991 appellant, then a 35-year-old distribution clerk, filed an occupational disease claim, alleging that she developed a condition in her upper extremities due to factors of her federal employment. The Office accepted the claim for thoracic outlet syndrome and 1<sup>st</sup> rib resection. The claim was later expanded to include depression and chronic pain. Appellant received compensation for intermittent periods of wage loss between February 15, 1992 and October 8, 1993. She resumed limited-duty work as a modified distribution clerk effective October 21, 1992. She subsequently submitted a letter of resignation and quit her job on April 28, 1994.<sup>1</sup>

On April 1, 1996 appellant filed a claim for a recurrence of disability beginning April 28, 1994.

In a decision dated October 18, 1996, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that she sustained a recurrence of disability on or after April 28, 1994 due to her accepted employment-related conditions.

Appellant requested a hearing, which was held on September 24, 1997.

In a decision dated January 2, 1998, an Office hearing representative affirmed the Office's October 18, 1996 decision.

On January 4, 1999 appellant requested reconsideration.

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<sup>1</sup> The record indicates that appellant quit her job because she became upset when her supervisor reprimanded her about leave/absences from work. Appellant tried to regain her position without success.

In support of her reconsideration request, appellant submitted a copy of a report by Dr. Mansour R. Sanjar, a physiatrist, dated October 13, 1997, along with the physician's office treatment notes from March through November 1998.

In a decision dated February 19, 1999, the Office denied appellant's request for reconsideration on the merits.

The Board finds that the Office properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128.<sup>2</sup>

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.<sup>3</sup> The regulations provide that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.<sup>4</sup> 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.

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.<sup>5</sup> Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.<sup>6</sup> Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.<sup>7</sup>

The Board finds that appellant failed to show that the Office erroneously applied or interpreted a point of law. Appellant did not advance on reconsideration a relevant legal argument not previously considered by the Office and did not submit relevant and pertinent new evidence to warrant a merit review.<sup>8</sup> The only new evidence proffered by appellant on reconsideration are treatment notes that are basically illegible and fail to address the relevant issue, which is whether appellant sustained a recurrence of disability due to a work-related

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<sup>2</sup> The Board's jurisdiction is limited to review of final Office decisions issued within one year of the date of the appellant's appeal. Because appellant's appeal was filed on May 26, 1999, the Board has jurisdiction to review only the decision of the Office dated February 19, 1999, which denied appellant's reconsideration request and not the Office decisions dated January 2, 1998 and October 18, 1996. *See* 20 C.F.R. § 501.3(d)(2).

<sup>3</sup> 5 U.S.C. § 8128; *see Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>4</sup> 20 C.F.R. § 10.606(b) (1999).

<sup>5</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

<sup>6</sup> *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

<sup>7</sup> *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

<sup>8</sup> The October 13, 1997 report by Dr. Sanjar was considered by the Office hearing representative.

condition on or after April 28, 1994. Because appellant did not satisfy the requirements of section 8128 of the Act, the Office properly denied her request for reconsideration on the merits.

The February 19, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
May 4, 2001

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member