

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE THOMAS and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 98-759; Submitted on the Record;
Issued October 18, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed her request for appeal on January 16, 1998, the only decision before the Board is the October 31, 1997 decision denying appellant's application for review. The Board has no jurisdiction to review the most recent merit decision of record, the October 15, 1996 decision of the Office denying appellant's claim.

By letter dated October 8, 1997, appellant filed a request for reconsideration. Included in appellant's request was a medical report dated February 14, 1994 from Dr. William V. Murawsky, a general practitioner. This report had been submitted previously.

Appellant also submitted a medical report dated December 29, 1994 from Dr. Susan M. Snodgrass, Board-certified in psychiatry and neurology, an emergency room report dated February 5, 1994² and a medical report from Dr. Stephen D. Helper, Board-certified in orthopedic surgery, dated October 3, 1997. The record contains a February 9, 1995 medical report from Dr. Snodgrass which had been previously considered. Although the December 29, 1994 report is new evidence, it essentially contains the same evidence found in the February 9, 1995 report and thus is repetitive and cumulative.³ The emergency room report provided no new

¹ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² The Board notes that the Office stated that the date of the emergency room report was February 3, 1994.

³ The Board notes that the Office stated in its October 31, 1997 decision that it had previously considered Dr. Snodgrass' December 29, 1994 report. The only report in the record prior to the reconsideration from Dr. Snodgrass was dated February 9, 1995.

evidence regarding the claim. Dr. Helper's report summarized prior records including Dr. Snodgrass' diagnosis of myofascial pain syndrome and Dr. Stephen Kaufman's⁴ diagnosis of chronic cervical-lumbosacral sprain with chronic pain. However, this report provided no new evidence and was, therefore, also, repetitive and cumulative of evidence already considered by the Office and thus had no probative value.

The Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a) did not constitute an abuse of discretion.

Section 8128(a) does not require the Office to review final decisions of the Office awarding or denying compensation. This section vests the Office with the discretionary authority to determine whether it will review a claim following the issuance of a final decision by the Office.⁵ Although it is a matter of discretion on the part of the Office of whether to reopen a case for further consideration under 5 U.S.C. § 8128(a),⁶ the Office, through regulations, has placed limitations on the exercise of that discretion with respect to a claimant's request for reconsideration. By these regulations, the Office has stated that it will reopen a claimant's case and review the case on its merits whenever the claimant's application for review meets the specific requirements set forth in sections 10.138(b)(1) and 10.138(b)(2) of Title 20 of the Code of Federal Regulations.

To require the Office to reopen a case for reconsideration, section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides in relevant part that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and 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.”⁷

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.⁸

⁴ Dr. Kaufman's June 18, 1996 medical report had been considered by the Office previously. Dr. Kaufman is Board-certified in orthopedic surgery.

⁵ *Gregory Griffin*, 41 ECAB 186 (1989).

⁶ *See Charles E. White*, 24 ECAB 85 (1972).

⁷ 20 C.F.R. § 10.138(b)(1).

⁸ 20 C.F.R. § 10.138(b)(2).

Evidence which does not address the particular issue involved⁹ or evidence which is repetitive or cumulative of that already in the record,¹⁰ does not constitute a basis for reopening a case. However, the Board has held that the requirement for reopening a claim for a merit review does not include the requirement that a claimant must submit all evidence which may be necessary to discharge his or her burden of proof. Instead, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.¹¹ However, such evidence was not submitted here, as none of the medical evidence was new evidence which addressed the issue of the causal relation of appellant's medical condition and her February 3, 1994 injury.

Therefore, the Office properly found that there was no basis to reopen the case for further merit review.

Consequently, the decision of the Office of Workers' Compensation Programs dated October 31, 1997 is hereby affirmed.

Dated, Washington, D.C.

October 18, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁹ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

¹⁰ *Eugene F. Butler*, 36 ECAB 393 (1984).

¹¹ *See Helen E. Tschantz*, 39 ECAB 1382 (1988).