

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GERALDINE WYNANS and U.S. POSTAL SERVICE,  
POST OFFICE, Dallas, Tex.

*Docket No. 97-789; Submitted on the Record;  
Issued December 8, 1998*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's case for a merit review.

The Board has duly reviewed the case record in this appeal and finds that the Office did not abuse its discretion in refusing to reopen appellant's case for a merit review.

The only decision before the Board on this appeal is the Office's December 5, 1996 decision denying appellant's request for a review on the merits of an Office hearing representative's October 2, 1995 decision, which affirmed the Office's December 1, 1994 decision, terminating appellant's compensation effective March 11, 1994.<sup>1</sup> Because more than one year has elapsed between the issuance of the Office hearing representative's October 2, 1995 decision and December 11, 1996, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the October 2, 1995 decision.<sup>2</sup>

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>3</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.<sup>4</sup> To be entitled to a merit review of an Office

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<sup>1</sup> The Office accepted appellant's claim for a contusion of the right leg and a lumbar strain sustained on February 19, 1989.

<sup>2</sup> 20 C.F.R. § 501.3(d)(2).

<sup>3</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.138(b)(1)-(2).

decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>5</sup> When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.<sup>6</sup>

In support of her request for reconsideration, appellant submitted descriptions of her positions at the employing establishment, correspondence with Dr. Bernie L. McCaskill, a Board-certified orthopedic surgeon, regarding his March 11, 1994 medical report, which revealed that appellant had no disability causally related to her February 19, 1989 employment injury, the Office's statement of accepted facts, witness statements from her coworkers describing the February 19, 1989 employment injury and her notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1). This evidence failed to address the specific issue in this case, whether appellant had any continuing disability causally related to the February 19, 1989 employment injury and, as such, was immaterial to the issue involved in appellant's request for reconsideration.

Similarly, appellant submitted a June 2, 1989 x-ray report of Dr. Won S. Kim, a Board-certified radiologist and a September 5, 1996 medical report of Dr. Samuel M. Bierner, a Board-certified physiatrist, that were immaterial to the issue involved in appellant's request for reconsideration. Dr. Kim's x-ray report revealed that appellant had a degenerated disc at L4-5. In his medical report, Dr. Bierner provided a history of the February 19, 1989 employment injury and appellant's medical treatment and his findings on physical examination. Dr. Bierner further provided a diagnosis of chronic cervical and lumbar pain syndrome and lumbar degenerative discopathy and myofascial pain syndrome of the cervical and lumbar areas ruling out radiculopathy of the right upper extremity. Dr. Bierner further provided a treatment plan and appellant's work restrictions. Dr. Kim's x-ray report and Dr. Bierner's medical report failed to address whether appellant's current conditions were caused by the February 19, 1989 employment injury.

Appellant resubmitted medical records from Dr. Charles E. Cook, whose primary specialty is in occupational medicine, Dr. Richard R. Jones, a Board-certified physiatrist, Dr. Frank A. Lang, a Board-certified orthopedic surgeon and Dr. T. Bradley Benedict, a Board-certified orthopedic surgeon, revealing her physical restrictions. Appellant also resubmitted Dr. Jones' April 27, 1994 medical report indicating that she could return to work and perform her regular duties as a flat sorter machine operator. Additionally, appellant resubmitted Dr. Benedict's medical treatment notes covering the period May 5 through June 9, 1989. Further, appellant resubmitted a June 12, 1990 medical report of Dr. A. Bryant Manning, a Board-certified family practitioner, revealing that her current condition was causally related to the February 19, 1989 employment injury. Material which is repetitious or duplicative of that already in the case record

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<sup>5</sup> *Id.* at § 10.138(b)(2).

<sup>6</sup> *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.<sup>7</sup>

Because appellant has failed to submit any new relevant and pertinent evidence not previously reviewed by the Office and further failed to raise any substantive legal questions, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

The December 5, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.  
December 8, 1998

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> See *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).