

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE GODWIN and U.S. POSTAL SERVICE,
POST OFFICE, Dunn, N.C.

*Docket No. 97-2690; Submitted on the Record;
Issued June 1, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

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 claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

On January 30, 1995 appellant, then a rural carrier, filed a claim for a traumatic injury (Form CA-1) assigned A06-0617021 alleging that on January 23, 1995 she sustained pain in her neck and right arm and hand. Appellant stated that when she arrived at her route, most of the boxes had been destroyed. She further stated that she tried to put mail in the boxes and that she pulled on one box in particular, but was unable to open it. Appellant then stated a box fell while she was putting a large envelope inside with both hands. She also stated that she tried to raise it back and that this is when she felt pain in her neck. Appellant stopped work on January 26, 1995.

By decision dated July 15, 1995, the Office found the evidence of record insufficient to establish that appellant sustained an injury as alleged. In an accompanying memorandum, the Office found that the incident did not occur as alleged.

In a July 27, 1995 letter, appellant requested a review of the written record by an Office representative. By decision dated November 22, 1995, the hearing representative found the evidence of record sufficient to establish that the incident occurred as alleged, but insufficient to establish a causal relationship between the claimed condition and factors of appellant's employment.

In a letter dated November 12, 1996, appellant requested reconsideration of the hearing representative's decision. By decision dated December 5, 1996, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that the evidence submitted was of a repetitious nature, irrelevant and immaterial and thus insufficient to warrant a review of the prior decision.

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 Inasmuch as appellant filed her appeal with the Board on September 3, 1997 the only decision properly before the Board is the Office's December 5, 1996 decision, denying appellant's request for reconsideration.

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. 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 the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.² 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 requirements, the Office will deny the application for review without review of the merits of the claim.³

In support of her request for reconsideration, appellant submitted a statement from the Office regarding the acceptance of her January 1984 claim for precipitation of herniated nucleus pulposus at C5-6 and October 25, 1984 recurrence of disability. Appellant also submitted a magazine article regarding the timely submission of office forms. Further, appellant submitted a medical bill for services rendered on January 25, 1995. This evidence is not relevant to the issue in this case whether appellant has submitted medical evidence sufficient to establish a causal relationship between the claimed condition and factors of her federal employment.

In further support of her request for reconsideration, appellant submitted the February 27, 1995 medical report, of Dr. Stephen T. Gupton, Jr., a neurologist, revealing a history of the January 23, 1995 employment incident and her medical treatment. Dr. Gupton's report is insufficient to establish causal relation inasmuch as it failed to address whether appellant's condition was caused by the January 23, 1995 employment incident.

Additionally, appellant submitted a March 20, 1995 medical report, of Dr. Robert L. Allen, a Board-certified neurosurgeon, previously of record. In this report, Dr. Allen indicated that appellant underwent surgery to decompress the nerve root on the right side at C6-7 due to nerve root entrapment from spondylosis. He noted appellant's previous cervical disc surgery including, an anterior fusion at C5-6. Dr. Allen opined that appellant's

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 20 C.F.R. § 10.138(b)(1).

³ 20 C.F.R. § 10.138(b)(2).

anterior fusion at C5-6, which accelerated the spondylitic change at C6-7, ultimately resulted in surgery. This evidence was insufficient to show how the above condition was related to the employment injury. Moreover, this report was cumulative of previous reports of Dr. Allen. Appellant also submitted a narrative statement describing the January 23, 1995 employment incident, the medical treatment she received and her request for the proper form to file a claim previously of record. The Board has held that 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.⁴

Inasmuch as appellant has failed to show that the Office erroneously applied or interpreted a point of law, that she advanced a point of law or a fact not previously considered by the Office or that she submitted relevant and pertinent evidence not previously considered by the Office, the Board finds that the Office was not required to review the merits of appellant's claim.⁵

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

Dated, Washington, D.C.
June 1, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁵ *Nora Favors*, 43 ECAB 403 (1992).