

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHELE R. MATTEO and U.S. POSTAL SERVICE,  
POST OFFICE, Las Vegas, NV

*Docket No. 98-2600; Submitted on the Record;  
Issued April 25, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

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

On March 21, 1997 appellant, then a 37-year-old window clerk, filed a claim for a traumatic injury, Form CA-1, alleging that on March 7, 1997 she felt a lot of pain in her back and shoulder while putting away supplies on the shelves. Appellant indicated that she stopped working on March 10, 1997.

By decision dated May 20, 1997, the Office denied the claim, stating that the medical evidence of record did not explain how the reported work incident caused or aggravated the claimed injury.

By letter dated June 19, 1997, which was postmarked June 20, 1997, appellant requested an oral hearing before an Office hearing representative.

By decision dated August 11, 1997, the Office's Branch of Hearings and Review denied appellant's request for a hearing, stating that appellant's letter requesting a hearing was postmarked June 20, 1997, more than 30 days after the Office issued the May 20, 1997 decision and that, therefore, appellant's request was untimely. The Branch informed appellant that she could request reconsideration by the Office and submit additional evidence.

By letter dated May 18, 1998, appellant requested reconsideration of the Office's May 20, 1997 decision and submitted additional evidence consisting of a letter report dated June 9, 1997, from appellant's treating physician, Dr. James S. Lapcevic, an osteopath, in which he strongly objected to the Office's finding in its May 20, 1997 decision, that his March 21, 1997 report did not contain an adequate explanation on causation. He stated that he believed his report was adequate in that it was based on appellant's subjective complaints, a physical examination and appellant's "notable symptomatology and physical findings." In his March 21,

1997 report, Dr. Lapcevic stated that appellant came in “with pain in the neck, midthoracic region and low back secondary to injury that she had suffered on March 7, 1997 on her job” at the employing establishment. He reviewed appellant’s history of injury, performed a physical examination and diagnosed cervical, thoracic and lumbosacral strain and sprain and myospasticity.

Appellant also submitted Dr. Lapcevic’s progress notes from the Advanced Back Pain Institute dated from March 24 through June 9, 1997. The earliest progress note dated March 24, 1997, reiterated Dr. Lapcevis’ diagnosis of cervical, thoracic and lumbosacral strain and sprain, and myospasticity, described appellant’s condition, prescribed treatment and recommended a few days off from work. A progress note dated April 30, 1997, stated that appellant’s sciatica and sacroiliitis was exacerbated due to her increased working schedule. The last progress note dated June 9, 1997, stated that appellant’s diagnosed condition of cervical, thoracic and lumbosacral pain with musculoskeletal spasticity was resolved.

By decision dated May 29, 1998, the Office denied appellant’s request for reconsideration.

The Board has duly reviewed the case record and finds that the refusal of the Office to reopen appellant’s case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

Since more than one-year had elapsed from the date of the Office’s May 20, 1997 decision, to the filing of appellant’s appeal on August 26, 1998, the Board lacks jurisdiction to review that decision.<sup>1</sup> The only decision before the Board on this appeal is the Office’s May 29, 1998 decision, denying appellant’s request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees’ Compensation Act,<sup>2</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>3</sup> 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.<sup>4</sup> 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

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<sup>1</sup> See *Michael A. Gnoth*, 41 ECAB 988, 991 (1990); 20 C.F.R. § 10.138(b)(2).

<sup>2</sup> 5 U.S.C. § 8181 *et seq.*

<sup>3</sup> 20 C.F.R. §§ 10.138(b)(1) and (2).

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

<sup>5</sup> *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

involved in the present case of whether the claimed injury or aggravation was caused by the March 7, 1997 employment incident, does not constitute a basis for reopening the case.<sup>6</sup>

In the present case, in support of her request for reconsideration, appellant submitted Dr. Lapcevic's June 9, 1997 letter, and his progress notes from the Back Pain Institute dated from March 24 through June 9, 1997. In his June 9, 1997 letter, Dr. Lapcevic criticized the Office's characterization of his March 21, 1997 report as inadequate, but he did not provide a rationalized explanation as to how appellant's back condition is causally related to the March 7, 1997 employment injury in either the March 21 or June 9, 1997 letters. Dr. Lapcevic's progress notes contain a diagnosis of appellant's back condition, chronicle his treatment of appellant and in the April 30, 1997, note state that appellant's sciatica and sacroiliitis was exacerbated by her work schedule, but they also do not provide a rationalized medical opinion explaining how specific factors of appellant's employment contributed to her back condition. Appellant, therefore, did not show that the Office erroneously applied or misinterpreted a rule of law, did not advance a point of law or fact not previously considered by the Office or submit relevant and pertinent evidence not previously considered by the Office. Appellant has, therefore, not established that the Office abused its discretion in its May 29, 1998 decision, by denying appellant's request for a review on the merits of its May 20, 1997 decision.

The decision of the Office of Workers' Compensation Programs dated May 29, 1998 is hereby affirmed.

Dated, Washington, D.C.  
April 25, 2000

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> *Richard L. Ballard, supra note 5; Edward Matthew Diekemper, 31 ECAB 224-25 (1979).*