

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOREN E. PRITT and U.S. POSTAL SERVICE,
DAVIS POST OFFICE, Davis, CA

*Docket No. 99-811; Submitted on the Record;
Issued August 3, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs, by its decisions dated May 2 and September 9, 1998, abused its discretion by denying appellant's requests for reconsideration under 5 U.S.C. § 8128(a).

On July 12, 1995 appellant, then a 46-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that on October 12, 1994 he first realized that his left leg, ankle and foot conditions were "exacerbated, aggravated and precipitated" by factors of his federal employment. By decision dated November 13, 1995, the Office denied appellant's claim for compensation on the grounds that the evidence of record failed to establish a causal relationship between appellant's left tarsal tunnel syndrome and factors of his federal employment. By letter dated November 20, 1995, appellant, through his attorney, requested a hearing before an Office hearing representative. By decision dated October 16, 1997, the Office hearing representative denied appellant's claim on the grounds that the medical opinion evidence of record was insufficient to establish a causal relationship between appellant's condition and factors of his federal employment.

By letter dated April 19, 1998, appellant, through his attorney, requested reconsideration of his claim. To support his reconsideration request, he submitted medical reports by Dr. Stephen H. Wiggins, a Board-certified neurologist, dated March 26, 1998, August 18, 1997 and August 23, 1996. Appellant also submitted a previously submitted report by Dr. Dwight Shen, a Board-certified general practitioner, dated October 14, 1994. In his report dated August 23, 1996, Dr. Wiggins described appellant's medical history and prescribed medications. He stated that a neurological examination of appellant revealed right medial thigh and left posterior lateral and medial scarring from shrapnel wounds, as well as numbness and loss of sensation in those areas. Dr. Wiggins also stated that appellant experienced pain and burning between his left toes. He further stated that a clear pes planus was observed on both feet. Additionally, Dr. Wiggins described appellant's reflexes, strength and gait. He noted that appellant reported that he could walk 10 to 15 minutes before experiencing difficulty walking

and that he was able to stand so long as he favored his right leg. Dr. Wiggins diagnosed right sciatic nerve injury with overlying neuropathic changes, chronic right medial posterior thigh pain and numbness, tingling and pain in both feet. He also diagnosed left medial and lateral ankle injuries and bilateral pes planus. Dr. Wiggins' August 18, 1997 report was previously submitted. In his report dated March 26, 1998, Dr. Wiggins stated that appellant's preexisting medical condition, left foot post-traumatic neuropathy with tarsal tunnel syndrome and right sciatica, was exacerbated by the "kind of work [appellant] did working for the [employing establishment]." He also stated that he had access and referred to appellant's Veterans Administration medical records and that they were consistent with his own findings. Dr. Wiggins noted Dr. Shen's October 14, 1994 report stating that appellant's condition was "particularly aggravated by any kind of cold temperature, prolonged walking, standing and stairs, and when aggravated, the pain became severe and lasted several hours for several days before it improved and was not relieved with rest." He further stated that appellant's preexisting conditions "were definitely worsening on the basis of my examination and that of Dr. Shen from the V.A. hospital, and work in the [employing establishment] as a worker and mail carrier."

By decision dated May 2, 1998, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted to support his request was immaterial and insufficient to warrant review of its prior decision.

By letter dated June 9, 1998, appellant, through his attorney, again requested reconsideration of his claim. To support his request for reconsideration, appellant submitted an undated report by Gary Lancaster, Ph.D., a licensed psychologist. In his report, Dr. Lancaster stated that he began treating appellant for post-traumatic stress disorder (PTSD) in April 1991 following appellant's eight-month hospitalization for PTSD. He also stated that appellant reported "difficulty" with his left leg and ankle throughout the course of his treatment. Dr. Lancaster further noted that appellant stated that he carried mail on his left side and "by the end of his work day he could hardly make his rounds as a result of fatigue and pain in the left foot." Additionally, he described the symptoms of appellant's PTSD and related his condition to his military experiences in Vietnam. Dr. Lancaster noted that appellant's PTSD caused dissociation, which "takes its toll on all aspects of life" including "relationship issues, work issues, health issues, etc." He also noted that appellant was "hardly capable of maintaining his life" and was prescribed "heavy psychotropic medication." Dr. Lancaster opined that appellant's PTSD prevented him from attending to his left leg and foot conditions and, therefore, his condition was not diagnosed and treated until July 10, 1995.

By decision dated September 9, 1998, the Office denied appellant's reconsideration request on the grounds that the medical evidence submitted to support his request was insufficient to warrant a merit review. The Office explained that appellant's request for reconsideration "contained no information or argument related to [the] issue [of causal relationship] but instead provided medical evidence, which explain[ed] why [appellant] did not file [his] claim sooner and therefore was not relevant to the issue in [his] case."

The Board's jurisdiction to consider and decide appeals from final Office decisions extends only to those decisions issued within one year of December 7, 1998, the date on which

this appeal was filed.¹ Therefore, the Office's May 2 and September 9, 1998 decisions denying appellant's requests for further merit review are the sole decisions within the Board's jurisdiction.

As it is a matter of discretion on the part of the Office whether to reopen a case for further merit review under 5 U.S.C. § 8128, the function of the Board on this appeal is to determine whether the Office abused its discretion.

The Board finds that the Office, by its May 2 and September 9, 1998 decisions, properly denied appellant's requests for further merit review of his claim under 5 U.S.C. § 8128(a).

In order to warrant a grant of a claimant's reconsideration request, the claimant must show that the Office erroneously applied or interpreted a point of law, advance a new legal argument supporting his claim not previously considered by the Office, or submit new and relevant evidence not previously considered by the Office.² Where such evidence and arguments are present, it is well established under Board precedent that the Office must reopen a case for a merit review.³ Section 10.138(b)(2) of the Office's regulations 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 reviewing the merits of the claim.⁴ The submission of evidence or argument which repeats or duplicates evidence or argument already considered by the Office does not constitute a basis for reopening a case for further review on the merits.⁵

In the present case, the Office properly found that appellant's April 19 and June 9, 1998 requests for reconsideration did not warrant further merit review of his claim. Appellant's April 19 and June 9, 1998 requests were not supported by new and relevant evidence not previously considered by the Office, nor did they show that the Office erroneously applied or interpreted a point of law or advance a new legal argument. Dr. Wiggins' reports, dated March 26, 1998, August 18, 1997 and August 23, 1996, contained no new evidence regarding the issue of whether appellant's left tarsal tunnel syndrome and other left lower extremity conditions were causally related to factors of his federal employment. He did not address causal relationship in his August 23, 1996 report thereby rendering it irrelevant and insufficient to warrant review. Dr. Wiggins' August 18, 1997 report was previously of record and previously considered by the Office. The March 26, 1998 report contained no new evidence relating appellant's conditions to his federal employment as it was cumulative of his previously submitted reports. Dr. Lancaster's undated report was irrelevant as it contained no evidence regarding the causal relationship issue. Dr. Shen's report, dated October 14, 1994, was previously submitted.

¹ *Jeanette Butler*, 47 ECAB 128 (1995); *Donald J. Miletta*, 34 ECAB 1822 (1983).

² *Alton L. Vann*, 48 ECAB 259, 269 (1996); 20 C.F.R. § 10.138(b)(1).

³ *Helen E. Tschantz*, 39 ECAB 1382, 1385 (1988).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *David E. Newman*, 48 ECAB 305, 308 (1997); see *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

The decisions of the Office of Workers' Compensation Programs dated September 9 and May 2, 1998 are affirmed.

Dated, Washington, D.C.
August 3, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member