

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT K. BELL and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Washington, DC

*Docket No. 00-259; Submitted on the Record;
Issued October 26, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

Appellant, a 46-year-old computer specialist, filed a claim for benefits on July 16, 1996, alleging that on or about April 20, 1996 he sustained a skin ulcer on his left buttock, in addition to nausea and chills, which he attributed to factors of his employment. The Office accepted appellant's claim for pressure ulcer on the left ischial area and debridement with removal of infected bone on March 7, 1997.

On June 30, 1998 appellant filed a Form-2a claim for recurrence of disability, alleging that he was suffering from a urinary tract condition caused or aggravated by the 1996 skin ulcer condition.

By decision dated September 23, 1998, the Office denied appellant compensation for a recurrence of disability. The Office found that appellant failed to submit medical evidence sufficient to establish that the claimed condition or disability as of June 30, 1998 was caused or aggravated by the accepted 1996 skin ulcer condition.

By letter dated May 21, 1999, appellant requested reconsideration of the September 23, 1998 Office decision. In support of his claim, appellant submitted a September 25, 1998 report from Dr. Rafael J. Convit, a specialist in plastic surgery and appellant's treating physician. Dr. Convit diagnosed a Grade III pressure sore in the perineal area following a June 26, 1998 examination, and stated that healing was complete by August 15, 1998. He further stated that he had performed surgery on appellant two years earlier for his left ischial pressure sore, noted that appellant had also undergone two surgeries on his right ischial area, and concluded that these procedures all involved the loss of bone in the bilateral ischial area. Dr. Convit concluded that these surgeries placed appellant's perineum at a much higher risk of breakdown.

By decision dated July 9, 1999, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his cervical condition claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by constituting relevant and pertinent new evidence not previously considered by the Office.¹ Section 10.608(b) 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.² 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.³

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and he has not constituted relevant and pertinent new evidence not previously considered by the Office. Although appellant submitted Dr. Convit's September 25, 1998 report with his request for reconsideration, this report is not relevant and pertinent because it merely states summarily that appellant had a perineal condition in 1998 which healed within three months and notes that surgery on the ischial area placed his perineum at a higher risk of breakdown. Dr. Convit's report, therefore, is not sufficient to establish that the Office erred in finding appellant's alleged recurrence of June 30, 1998 is not causally related to his accepted skin ulcer condition. Thus, appellant's request did not contain any relevant and pertinent new evidence for the Office to review. The issue in the case is whether appellant sustained a recurrence of his work-related disability as of June 30, 1998 and is medical in nature. The other medical evidence submitted by appellant was previously of record and considered by the Office in reaching its decisions. Additionally, appellant's May 21, 1999 letter did not show the Office erroneously applied or interpreted a specific point of law nor did it advance a legal argument not previously considered by the Office. Although appellant generally contended that the claimed urinary tract condition was caused or aggravated by factors or incidents of his federal employment, he failed to submit relevant and pertinent new medical evidence in support of this contention. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

¹ 20 C.F.R. § 10.606(b)(2); *see generally* 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.608(b).

³ *Howard A. Williams*, 45 ECAB 853 (1994).

The decision of the Office of Workers' Compensation Programs dated July 9, 1999 is hereby affirmed.

Dated, Washington, DC
October 26, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member