

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BRENDA HEBERT and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Taunton, MA

*Docket No. 98-2588; Submitted on the Record;  
Issued October 23, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

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 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.

On January 3, 1991 appellant, then a 30-year-old distribution clerk, filed a traumatic injury claim, (Form CA-1) assigned number A01-0290165, alleging that on September 17, 1990 she injured her neck and upper back.<sup>1</sup>

By letter dated July 3, 1991, the Office accepted appellant's claim for cervical and lumbar strain.

On February 17, 1994 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability on December 14, 1993 causally related to her September 17, 1990 employment injury.

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<sup>1</sup> Prior to filing the instant claim, appellant filed a Form CA-1 on July 3, 1989, assigned number A1-276281, alleging on that date she sustained a back injury when she lifted a plastic flat box to give to a customer at the window. In a September 20, 1989 decision, the Office found the medical evidence of record insufficient to establish a causal relationship between appellant's back condition and the July 3, 1989 incident. By letter dated September 28, 1989, appellant requested reconsideration of the Office's decision. By decision dated December 17, 1989, the Office accepted appellant's claim for cervical/lumbar myofascitis based on the medical evidence of record. On September 25, 1990 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability on September 17, 1990. In a December 7, 1990 decision, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability due to the July 3, 1989 employment injury. In an accompanying memorandum, the Office noted that the record indicated that appellant sustained a new injury and that she had been advised by letter dated October 18, 1990 to submit a traumatic injury claim (Form CA-1).

By decision dated March 11, 1994, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability as alleged.

On January 3, 1997 appellant filed a duplicate Form CA-2a alleging that she sustained a recurrence of disability on December 14, 1993 causally related to her September 17, 1990 employment injury.

By decision dated January 9, 1997, the Office found the medical evidence of record insufficient to establish that appellant sustained a recurrence of disability causally related to her September 17, 1990 employment injury. In addition, the Office advised appellant that the Form CA-2a she filed on January 3, 1997 was a duplicate of her previous Form CA-2a, which was denied in its March 11, 1994 decision. In a January 6, 1998 letter, appellant, through her counsel, requested reconsideration of the Office's decision and submitted medical evidence. In an addendum dated February 18, 1998, appellant, through her counsel, submitted additional medical evidence.

In a decision dated April 6, 1998, the Office denied appellant's request for reconsideration without a merit review on the grounds that the evidence submitted was immaterial and, thus, insufficient to warrant review of the prior decision.

The only decision over which the Board has jurisdiction is the Office's April 6, 1998 decision denying appellant's request for a review of the merits of the case. Because more than one year has elapsed between the issuance of the Office's decisions dated March 11, 1994 and January 9, 1997, and the date appellant filed her appeal with the Board, August 21, 1998, the Board lacks jurisdiction to review the March 11, 1994 and January 9, 1997 decisions.<sup>2</sup>

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act.<sup>3</sup> Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and the specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

“(i) Showing that the Office erroneously applied or interpreted a point of law, or

“(ii) Advancing a point of law or fact not previously considered by the Office, or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”<sup>4</sup>

Section 10.138(b)(2) provides that any application for review of the merits of the claim, which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of

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<sup>2</sup> See 20 C.F.R. §§ 501.2(c), 501.3(d).

<sup>3</sup> 5 U.S.C. § 8103 *et seq.*

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

this section will be denied by the Office without review of the merits of the claim.<sup>5</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary values and does not constitute a basis for reopening a case.<sup>6</sup> Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.<sup>7</sup>

In this case, the Office denied appellant's recurrence claim on the grounds that she failed to establish that she had any disability on December 14, 1993 causally related to her September 17, 1990 employment injury. In support of her request for reconsideration, appellant submitted an August 11, 1997 medical report of Dr. Kenneth H. Guild, a Board-certified orthopedic surgeon and appellant's treating physician, finding that she had fibromyalgia, which was related to her September 17, 1990 work-related injury. In further support of her request for reconsideration, appellant submitted Dr. Guild's February 3, 1998 medical report revealing that she had a herniated cervical disc and cervical radiculopathy at C5-6. Dr. Guild opined that appellant was unable to work more than four hours per day due to her work-related injury of September 17, 1990. Dr. Guild's opinion regarding the causal relationship between appellant's conditions and her September 17, 1990 employment injury was previously reviewed and considered by the Office, and therefore is repetitive. Further, as the Office did not accept appellant's claim for the conditions of fibromyalgia, a herniated cervical disc and cervical radiculopathy, she retains the burden of proving by the submission of probative evidence that these conditions were due to her employment injury.<sup>8</sup>

Appellant also submitted a January 6, 1992 medical report from Dr. Joseph R. Madsen, a neurosurgeon, indicating that she had a C5-6 disc herniation with root signs at that level. Dr. Madsen opined that it was possible that some of appellant's pain was a result of pressure on the thecal sac around the spinal cord rather than the nerve root itself or that some of it may be related to the degenerated disc based on appellant's clinical presentation. Dr. Madsen did not specifically address whether appellant's condition was caused by her September 17, 1990 employment injury. Thus, his report is irrelevant and insufficient to warrant reopening of the claim. Additionally, as noted above, the Office has not accepted appellant's claim for a C5-6 disc herniation.

Inasmuch as appellant has not established that the Office erroneously applied or interpreted a point of law, advanced a point of law or fact not previously considered by the Office or submitted relevant and pertinent evidence not previously considered by the Office, she has not established that the Office abused its discretion in denying her request for review under section 8128 of the Act.<sup>9</sup>

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<sup>5</sup> See 20 C.F.R. § 10.138(b)(2).

<sup>6</sup> *Daniel Deparini*, 44 ECAB 657 (1993).

<sup>7</sup> *Id.*

<sup>8</sup> *Lucrecia M. Nielson*, 41 ECAB 583 (1991).

<sup>9</sup> On appeal appellant contends that she sustained a herniated disc causally related to her employment. Since the Office has not issued a decision on this aspect of her claim, it is not an issue before the Board at this time. 20 C.F.R. § 501.2(c).

The April 6, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
October 23, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member