

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY L. SNEED and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 99-2415; Submitted on the Record;
Issued October 25, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

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).

The present case was before the Board on a prior occasion. To briefly summarize the facts in this case, appellant, a 38-year-old letter carrier, filed a claim for benefits on December 29, 1975, alleging that she fell and injured her left knee in the performance of duty. The Office accepted appellant's claim for torn cartilage in her left knee and post-traumatic arthritis of the left knee. Appellant subsequently filed a claim for partial disability in her left knee as of August 20, 1985, which the Office rejected by decisions dated July 13, 1993, November 20, 1995 and March 8, 1996.

By decision dated May 18, 1998, the Board affirmed the Office decisions dated November 20, 1995 and March 8, 1996.

By letters dated October 5, 1998 and April 20, 1999, appellant requested reconsideration of the March 8, 1996 Office decision. In support of her claim, appellant submitted an October 8, 1998 report from Dr. Gerald M. Yosowitz, a Board-certified orthopedic surgeon, which stated:

"This is to certify that [appellant] is currently being treated for a contusion of her left knee with a tear of the medial meniscus and the development of post-traumatic arthritis which has worsened since [February 6, 1985]."

By decision dated July 20, 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; she has not advanced a relevant legal argument not previously considered by the Office; and she has not constituted relevant and pertinent new evidence not previously considered by the Office. Although appellant submitted Dr. Yosowitz's October 8, 1998 report with her request for reconsideration, this report is cumulative and repetitive of previous reports because it merely states summarily that he is treating appellant for a left knee condition which has worsened since February 1985. Dr. Yosowitz's report, therefore, is not sufficient to establish that the Office erred in finding that appellant's current condition or disability was not caused or aggravated by factors or incidents of her employment. Thus, appellant's request did not contain any relevant and pertinent new evidence for the Office to review. This is important since the outstanding issue in the case -- whether appellant's claimed left knee condition or disability was causally related to her accepted 1975 employment injury -- was medical in nature. All the other medical evidence submitted by appellant was previously of record and considered by the Office in reaching prior decisions. Additionally, appellant's October 5, 1998 and April 20, 1999 letters 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 her left knee condition was caused or aggravated by factors or incidents of her federal employment, she failed to constitute 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 20, 1999 is hereby affirmed.

Dated, Washington, DC
October 25, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member