

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDREW L. MARTUCCI and U.S. POSTAL SERVICE,
POST OFFICE, Flushing, NY

*Docket No. 98-2391; Submitted on the Record;
Issued September 15, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for review of the merits on May 20, 1998.

The Board has duly reviewed the case on appeal and finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits.

Appellant, a truck driver, filed a claim on December 22, 1978 alleging that he sustained injuries in a motor vehicle accident in the performance of duty. The Office accepted his claim for dislocation middle finger, sprain of the left wrist, nonunion of a fracture of the styloid process of the ulnar, left button hole deformity of the middle finger and low back sprain. The Office expanded appellant's claim to include post-traumatic stress disorder.

Appellant returned to light-duty work for six hours a day on December 11, 1986. He filed a notice of recurrence of disability on October 31, 1995 alleged that he sustained a recurrence of total disability causally related to his December 22, 1978 employment injury on August 9, 1995. By decision dated August 21, 1996, the Office denied appellant's claim for recurrence of disability finding that the medical evidence did not support a causal relationship between his current condition and his accepted employment injuries. He requested an oral hearing and by decision dated April 29, 1997 and finalized April 30, 1997, the hearing representative affirmed the Office's August 21, 1996 decision. Appellant, through his representative, requested reconsideration on April 21, 1998. By decision dated May 20, 1998, the Office declined to reopen his claim for review of the merits finding that he failed to submit relevant new evidence or legal argument.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the

Office.¹ 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.²

In support of his request for reconsideration, appellant submitted several medical reports. However, each of these reports had been submitted to the hearing representative and reviewed prior to the April 30, 1997 decision. The medical reports did not constitute relevant and pertinent evidence not previously considered by the Office. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.³

Appellant's attorney also argued that appellant's exacerbation of his post-traumatic stress disorder was a recurrence of disability as defined by the Federal Employees' Compensation Act.⁴ The hearing representative addressed this argument in the April 20, 1997 decision and found that appellant's hospitalization was an intervening event such that the exacerbation of appellant's condition was not employment related. As the hearing representative addressed the issue of whether appellant's nonemployment-related stomach condition and resultant hospitalization which exacerbated his emotional condition was a direct and natural result of his primary injury, this argument is insufficient to require the Office to reopen appellant's claim for review of the merits.

The May 20, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 15, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

¹ 20 C.F.R. § 10.138(b)(1).

² 20 C.F.R. § 10.138(b)(2).

³ See *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

⁴ 5 U.S.C. § 8101 *et seq.*