

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CORDIA M. FORD and U.S. POSTAL SERVICE,
POST OFFICE, Atlanta, GA

*Docket No. 01-1744; Submitted on the Record;
Issued June 19, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

On April 24, 1987 appellant, a 45-year-old letter carrier, injured both legs when she was struck by the bottom of an 80-pound hamper. She filed a claim for benefits, which the Office accepted for contusion of the left knee, lacerations of both legs and lower back strain. Appellant stopped work on April 24, 1987 and returned to limited duty for four hours per day in January 1988. She continued to miss work for intermittent periods, for which the Office paid appropriate compensation. The Office also accepted a neck injury on June 4, 1992.

On January 26 and February 10, 1998 appellant filed a Form CA-2 claim for recurrence of disability, alleging that her condition or disability as of January 24, 1998 was caused or aggravated by her 1987 and 1992 employment injuries.

By decision dated April 28, 1998, the Office denied appellant's claim for a recurrence of disability and found that she was no longer entitled to compensation for total disability.

Appellant accepted a light-duty job with the employing establishment on May 16, 1998.

In a letter dated May 26, 1998, appellant requested an oral hearing.

By decision dated August 12, 1998, an Office hearing representative, based on a review of the written record, set aside the April 28, 1998 Office decision, finding there was a conflict in the medical evidence regarding whether appellant continued to have residuals from her accepted employment injuries and whether she sustained a recurrence of disability in January 1998. The hearing representative remanded the case for referral to an impartial medical examiner to resolve the conflict in medical evidence.

In order to determine whether appellant had any residual disability causally related to her accepted employment conditions and whether she sustained a recurrence of disability as of January 1998, the Office referred appellant for an impartial examination with Dr. Thomas E. Price, a Board-certified orthopedic surgeon, for August 7, 1998.

Appellant stopped working on August 19, 1998. She has not returned to work since that date.

In a report dated October 5, 1998, Dr. Price stated findings on examination, reviewed the medical records and the statement of accepted facts and stated:

“I do not believe there are any residual disabling results of an orthopedic attribution to the work injuries that occurred in 1987 and 1992. I believe that the 1987 injury caused lower extremity contusions and lacerations with an acute lumbar strain and aggravation of an underlying condition. It is likely that this aggravation resulted in a worsening of [appellant’s] lumbar disc disease. There are no orthopedic disabling residuals from the lower extremity lacerations and contusions.

“I find no evidence for orthopedic disabling residual from the 1992 injury. I do believe that [appellant] suffered an aggravation to her cervical discomfort with that injury but believe at this point that any aggravation from the 1992 injury has ended.”

On April 16, 1999 the Office issued a proposed notice of termination based on Dr. Price’s impartial opinion, finding that his report represented the weight of the medical evidence. The Office gave appellant 30 days to submit additional medical evidence or a legal argument in opposition to the proposed termination.

By decision dated June 1, 1999, the Office terminated appellant’s compensation and denied her claim for recurrence of disability as of January 1998.

By letter postmarked June 23, 1999, appellant’s attorney requested an oral hearing, which was held on December 14, 1999.

By decision dated March 3, 2000, an Office hearing representative affirmed the June 1, 1999 Office decision terminating compensation for total disability and denying her claim for recurrence of disability. The hearing representative, however, found that appellant was still entitled to all medical treatment causally related to her work injuries.

By letter dated February 27, 2001, appellant’s attorney requested reconsideration. Appellant submitted office notes dated March 21, June 8, June 22, July 6, 2000 and January 16, 2001 from Dr. Plas James, a specialist in orthopedic surgery. Appellant also submitted a May 23, 2000 magnetic resonance imaging scan and a June 1, 2000 discogram report. In Dr. James’ January 16, 2001 report, he checked a box indicating that appellant should be off work for the next six weeks.

By decision dated May 7, 2001, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence 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 her claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.607, 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 submitting relevant and pertinent evidence not previously considered by the Office.¹ 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.²

In this 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 submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted was either previously considered and rejected by the Office in prior decisions or is not pertinent to the issue on appeal. Dr. James' reports and the diagnostic reports merely stated findings on examination and noted appellant's complaints of back and neck pain and therefore, are not sufficient to constitute probative, rationalized medical evidence indicating that appellant still had residuals from her accepted back and neck conditions that disable her from performing the light-duty position she last performed on August 19, 1998. Additionally, the letter from appellant's attorney failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Therefore, the Office acted within its discretion in refusing to reopen appellant's claim for a review on the merits.

¹ 20 C.F.R. § 10.607(b)(1). *See generally* 5 U.S.C. § 8128(a).

² *Howard A. Williams*, 45 ECAB 853 (1994).

The decision of the Office of Workers' Compensation Programs dated May 7, 2001 is hereby affirmed.

Dated, Washington, DC
June 19, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member