

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA G. MARCH and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, Tex.

*Docket No. 96-557; Submitted on the Record;
Issued April 3, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

The Board has duly reviewed the case record and finds that the Office did not abuse its discretion in refusing to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128.

This is the third appeal in this case. By decision dated March 15, 1991,¹ the Board remanded the case for the Office to resolve a conflict in the medical opinion evidence regarding whether appellant's left shoulder condition and disability beginning May 21, 1988 was causally related to her October 15, 1987 employment injury. After referring appellant to Dr. Charles Mitchell to resolve the conflict in medical opinion, the Office, in a decision dated December 3, 1991, denied appellant's claim for a recurrence of disability. By decision dated July 13, 1992 and finalized July 16, 1992, an Office hearing representative affirmed the Office's December 3, 1991 decision. Appellant requested reconsideration on June 29, 1993 and, in a merit decision dated July 8, 1993, the Office denied modification of its prior decision. Appellant filed an appeal with the Board; however, at her request the Board dismissed the appeal on February 21, 1995.² By letter dated March 10, 1995, appellant, through her attorney, requested reconsideration and submitted an additional medical report.

In a decision dated September 11, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was immaterial and insufficient to warrant review of the prior decision.

¹ Docket No. 90-1980.

² Order Dismissing Appeal, Docket No. 94-240.

The only decision over which the Board has jurisdiction is the Office's September 11, 1995 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 decision dated July 8, 1993 and December 4, 1995, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the decision dated July 8, 1993.³

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by written request to the Office identifying the decision and the specific issue(s) within the decision which 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.”⁴

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 this section will be denied by the Office without review of the merits of the claim.⁵ 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.⁶ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁷

In the present case, the Office denied appellant's claim on the grounds that the medical evidence did not establish that she sustained a left shoulder condition or a recurrence of disability on May 21, 1988 causally related to her October 15, 1987 employment injury. In support of her request for reconsideration, appellant submitted an operative report dated September 29, 1994 from Dr. Jeffrey Wallace. Dr. Wallace noted that appellant related a history of a left shoulder injury in October 1987 with seven subsequent anterior dislocations. He diagnosed a left shoulder dislocation with greater tuberosity fracture and left shoulder anterior Bankart lesion. He performed an open Bankart repair and open reduction and internal fixation of the left greater tuberosity fracture. However, as discussed above, evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁸

³ See 20 C.F.R. §§ 501.2(c), 501.3(d).

⁴ 20 C.F.R. § 10.138(b)(1).

⁵ See 20 C.F.R. § 10.138(b)(2).

⁶ *Daniel Deparini*, 44 ECAB 657 (1993).

⁷ *Id.*

⁸ See *Dominic E. Coppo*, 44 ECAB 484 (1993); 20 C.F.R. § 10.138(b)(1)(iii).

Dr. Wallace's report does not discuss the causation of appellant's shoulder condition or any resultant periods of disability, and thus does not address the pertinent issue in the instant case.⁹

As abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.¹⁰ Appellant has made no such showing here, and thus the Board finds that the Office properly denied her application for reconsideration of her claim.

The decision of the Office of Worker's Compensation Programs dated September 11, 1995 is hereby affirmed.

Dated, Washington, D.C.
April 3, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ Appellant, in his brief to the Board regarding the prior appeal, which is now contained in the record, argues that the employing establishment engaged in "doctor shopping;" that the Office erred in referring appellant to Dr. Mitchell to resolve a conflict in medical opinion; and that the employing establishment erroneously refused to allow appellant to file a claim for a new injury. However, the Office previously considered these arguments prior to reaching its July 8, 1993 decision. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim. *Richard L. Ballard*, 44 ECAB 146 (1992).

¹⁰ *Rebel L. Cantrell*, 44 ECAB 660 (1993).