

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NATALIE R. TAYLOR and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Oklahoma City, Okla.

*Docket No. 96-2419; Submitted on the Record;
Issued August 3, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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 her claim under 5 U.S.C. § 8128(a).

On December 10, 1993, appellant, a 35 year-old pharmacy technician, experienced pain in her back and hips when the elevator on which she was riding jammed between floors. On December 13, 1993, appellant filed a Form CA-1 claim based on traumatic injury, seeking continuation of pay based on the alleged injury she sustained to her lower back due to the employment incident of December 10, 1993. The Office accepted appellant's claim for lumbar strain and bilateral contusions in a letter dated March 31, 1994.

Appellant subsequently experienced periodic back pain and was placed on disability for intermittent periods. On January 9, 1995 she was released to return to full-duty work, with some minor restrictions, by her treating physician, Dr. Dean Hinz, Board-certified in family practice and internal medicine.

On September 21, 1995, appellant filed a CA-2 claim for recurrence of disability, alleging that on August 2, 1995 she experienced an exacerbation of her lower back pain, which she indicated had intermittently been giving her "sharp pains" since the occurrence of the December 10, 1993 employment injury.

Appellant subsequently submitted two reports to the Office from Dr. Hinz dated August 2 and September 1, 1995. Dr. Hinz stated in his August 2, 1995 report that appellant had a chronic back injury, and advised that, although she was currently working and able to stand while performing her usual work, she had experienced an acute flare-up of her back on the right side where there was a soft tissue injury area with trigger points and some sciatica down her right leg. Dr. Hinz found that appellant had a re-exacerbation of her soft tissue injury with sciatica of the right leg, which Dr. Hinz felt was a residual of her old injury. In his September 1, 1995 report,

which he characterized as a follow-up on her sciatica, Dr. Hinz stated that appellant had some connected problems, with a little stiffness. Dr. Hinz noted slightly improved range of motion with some swelling and tenderness of her feet and edema, but, overall, he advised that the soft tissue injury of the lower back, sciatica, and the feet pain were improved and stable. Dr. Hinz stated that unless she exacerbated her condition, appellant should experience a progressive improvement, particularly with the change in occupations she was pursuing in school.

By decision finalized January 2, 1996, the Office denied appellant's recurrence of disability claim. In the memorandum accompanying the decision, an Office claims examiner found that appellant failed to submit medical evidence sufficient to establish that the claimed recurrence of disability as of August 2, 1995 was caused or aggravated by the accepted December 10, 1993 employment injury. The claims examiner stated that Dr. Hinz did not relate the deterioration in appellant's lumbar spine to the accepted December 10, 1993 employment-related low back injury.

In a letter dated January 25, 1996, appellant requested reconsideration of the Office's January 2, 1996 decision. In support of her request, appellant submitted a brief, handwritten note dated January 10, 1996 from Dr. Hinz, who stated that there was direct correlation between the "visit" of August 2, 1995 and the re-exacerbation of the original injury of December 10, 1993.

By decision dated April 30, 1996, 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 Office stated that Dr. Hinz's note was repetitious and provided no medical explanation regarding how appellant's condition as of August 2, 1995 was caused or aggravated by her accepted December 10, 1993 employment injury.

The Board holds that the Office did not abuse 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 only decision before the Board on this appeal is the April 30, 1996 Office decision which found that the evidence submitted in support of appellant's request for reconsideration was insufficient to warrant review of its prior decision. Since the April 30, 1996 decision is the only decision issued within one year of the date that appellant filed her appeal with the Board, June 30, 1996, this is the only decision over which the Board has jurisdiction.¹

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law; by advancing a point of law or fact not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.² 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

¹ See 20 C.F.R. § 501.3(d)(2).

² 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128(a).

claim.³ 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.⁴

In the present case, appellant failed to show in her May 17, 1996 letter that the Office erroneously applied or interpreted a point of law or fact not previously considered by the Office; nor did she advance a point of law not previously considered by the Office. Neither has she submitted relevant and pertinent evidence not previously considered by the Office. Further, appellant submitted no new and relevant medical evidence with the May 17, 1996 reconsideration request. The issue in this case is medical in nature and must be addressed by a physician. The only new medical evidence which appellant submitted in support of her claim was Dr. Hinz's January 10, 1996 treatment note, which contained a brief statement from the physician who stated that there was direct correlation between appellant's August 2, 1995 visit and the "re-exacerbation" of the December 10, 1993 employment injury. Although Dr. Hinz's note had not been previously submitted, it does not constitute probative, rationalized medical opinion explaining how appellant's claimed condition or disability as of August 2, 1995 was caused or aggravated by her December 10, 1993 employment injury. Rather it is repetitious of his earlier reports. Therefore, the Office properly refused to reopen appellant's claim for a review on the merits.

The decision of the Office of Workers' Compensation Programs dated April 30, 1996 is therefore affirmed.

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

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

³ 20 C.F.R. § 10.138(b)(2).

⁴ See *Eugene F. Butler*, 36 ECAB 393, 398 (1984).