

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANASTASIA F. JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Houston, Tex.

*Docket No. 97-64; Submitted on the Record;
Issued August 17, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

In the present case, the Office accepted that appellant sustained a lumbosacral strain and a herniated nucleus pulposus L4-5 in the performance of duty on December 6, 1991. Appellant returned to a light-duty position and stopped working on July 14, 1993.¹ Her claim for compensation commencing July 14, 1993 was denied by decision dated October 13, 1993. By decisions dated June 1, 1994 and June 14, 1995, the Office denied modification of the October 13, 1993 decision.

In a letter dated June 10, 1996, appellant requested reconsideration of her claim and submitted additional evidence. By decision dated June 20, 1996, the Office found that the evidence submitted was not sufficient to warrant merit review of the prior decisions.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.² Since appellant filed her appeal on September 23, 1996, the only decision over which the Board has jurisdiction on this appeal is the June 20, 1996 decision denying her request for reconsideration.

The Board has reviewed the record and finds that the Office did not abuse its discretion in refusing to reopen the claim for merit review.

¹ Appellant returned to a light-duty position on December 16, 1993.

² 20 C.F.R. § 501.3(d).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ the Office's 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 fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ Section 10.138(b)(2) states that any application for review that does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.⁵

In the present case, the evidence submitted was not sufficient to require the Office to reopen the claim for merit review. The underlying issue in this case is whether appellant has established disability commencing July 14, 1993 causally related to her employment injury. In a report dated April 17, 1995, Dr. Homero R. Anchondo, a neurosurgeon, indicated that appellant's symptoms were related to a herniated disc at L4-5, with an MRI (magnetic resonance imaging) showing that the herniation was larger than in the past. The Board notes that appellant had previously submitted a May 26, 1995 report from Dr. Anchondo, which provided a more detailed history and an opinion that appellant's continuing symptoms were related to the herniated disc.⁶ The April 17, 1995 report does not discuss disability for work commencing July 14, 1993, or otherwise provide any new and relevant information regarding the medical issue in this case.

In a report dated February 22, 1995, Dr. Robert W. Koshman, an orthopedic surgeon, provided a history and results on examination, diagnosing left sciatica and a herniated L4-5 disc. Dr. Koshman notes only that appellant had episodes of back pain in July 1993, without discussing disability for work or providing an opinion relating any disability commencing July 14, 1993 to the employment injury. The Board therefore finds that the February 22, 1995 report from Dr. Koshman does not constitute new and relevant evidence sufficient to require the Office to reopen the claim for merit review.

Appellant also submitted a December 9, 1993 report from Dr. Jerry N. Street, an orthopedic surgeon, which was submitted earlier and does not constitute new evidence. A January 20, 1995 MRI does not address the relevant issue in this case.

The Board accordingly finds that appellant did not submit relevant and pertinent evidence not previously considered by the Office. Her request for reconsideration did not show that the Office erroneously applied or interpreted a point of law, nor did she advance a point of law or fact not previously considered by the Office. Appellant has not met the requirements of section

³ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.")

⁴ 20 C.F.R. § 10.138(b)(1).

⁵ 20 C.F.R. § 10.138(b)(2); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

⁶ The May 26, 1995 report from Dr. Anchondo was considered by the Office in its June 14, 1995 decision.

10.138(b)(1), and therefore the Office did not abuse its discretion in denying merit review in this case.

The decision of the Office of Workers' Compensation Programs dated June 20, 1996 is affirmed.

Dated, Washington, D.C.
August 17, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member