

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY J. PARKER and DEPARTMENT OF DEFENSE,
DEFENSE CONSTRUCTION SUPPLY CENTER, Columbus, Ohio

*Docket No. 96-1708; Submitted on the Record;
Issued July 16, 1998*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the refusal of the Office of Workers' Compensation Programs, by its March 29, 1996 decision to reopen appellant's case for a merit review, constituted an abuse of discretion.

This is the second appeal of this case.¹ In a July 24, 1995 decision, the Board affirmed the Office's denial of appellant's claim on the grounds that appellant had not met her burden of proof as she had not submitted a report containing a physician's opinion, supported by medical rationale and based on a complete history, explaining how and why the August 6, 1993 work incident caused her claimed right upper extremity condition.

By letter dated March 27, 1996, appellant requested reconsideration of the Office's decision. On reconsideration appellant submitted a prior request for reconsideration dated February 16, 1996; a copy of appellant's notice of traumatic injury claim Form-CA-1 dated August 6, 1993; several medical reports from Dr. Benjamin P. Kelch, an osteopath, dated August 19, October 5, 1993 and March 20, 1995; a medical report from Dr. Carl Neufeld, an osteopath, dated August 20, 1993; a comprehensive medical report from Dr. Bernard F. Masters, an osteopath, dated October 12, 1993; a faxed transmittal sheet dated March 20, 1995 accompanied by transcribed medical notes dated August 7 and 9, 1993; a x-ray report from Dr. D. Lanese, a Board-certified radiologist, dated August 7, 1993; a application for payment of medical benefits only dated August 7, 1993; and appellant's statements dated November 12, 1993 and February 17, 1996.

In a decision dated March 29, 1996, the Office denied appellant's request for reconsideration finding that appellant neither raised substantive legal questions, nor included new, relevant or pertinent evidence not previously considered. The Office also found that the

¹ Docket No. 94-438 (issued July 24, 1995). The history of the case is contained in the prior decision and is incorporated by reference.

evidence submitted on reconsideration was insufficient to warrant the reopening of appellant's claim for a merit review.

The Board finds that the Office did not abuse its discretion by denying merit review of her claim.²

Section 8128 of the Federal Employees' Compensation Act,³ provides for an award for or against payment of compensation. Section 10.138, the statute's implementing regulation, requires a written request that specifies the issues, which the claimant wishes the Office to review and the reasons why the decision should be changed.⁴ Therefore, a "claimant may obtain review of the merits of the claim by: "(i) showing that the Office erroneously applied or interpreted a point of law, or (ii) advancing a point of law or a fact not previously considered by the Office, or (iii) submitting relevant and pertinent evidence not previously submitted."⁵

Section 10.138(b)(2) provides that if a request for review of the merits of the claim does not meet at least one of the three requirements, the Office will deny the request without reviewing the merits.⁶ If claimant fails to submit relevant evidence not previously of record or advance legal contentions or facts not previously considered, the Office has the discretion to refuse to reopen a case for further consideration of the merits pursuant to section 8128(a).⁷

In this case, the Board finds that the Office properly declined to review the merits of appellant's claim on March 29, 1996. Appellant has not attempted to show an error in application or interpretation of a point of law, nor has she advanced a point of law or fact not previously considered by the Office. Appellant was only submitted evidence or arguments, which repeated or duplicated evidence or arguments already considered.⁸ Thus, appellant has not submitted relevant and pertinent evidence not previously considered by the Office as required by section 10.138(b)(1)(iii). Since appellant has not met the requirements of sections 10.138(b)(1)(i) through (iii), the Office properly denied her request for reconsideration without a merit review of her claim.

² The Board's scope of review is limited to those final decisions issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c), 501.3(d)(2). Because appellant filed her notice of appeal on May 8, 1996, the Board has jurisdiction only of the Office's March 29, 1996 decision denying appellant's application for review; *see also Oel Noel Lovell*, 42 ECAB 537 (1991).

³ 5 U.S.C. §§ 8101-8193; 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.138(b)(1); *John F. Critz*, 44 ECAB 788, 793 (1993).

⁵ 20 C.F.R. § 10.138(b)(1)(i) though (iii); *Willie H. Walker, Jr.*, 45 ECAB 126, 131 (1993).

⁶ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁷ *John E. Watson*, 44 ECAB 612, 614 (1993).

⁸ *Eugene F. Butler*, 36 ECAB 393, 398 (1984) (finding that evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case).

The decision of the Office of Workers' Compensation Programs dated March 29, 1996 is affirmed.

Dated, Washington, D.C.
July 16, 1998

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member