

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARYANN VELEZ and U.S. POSTAL SERVICE,
POST OFFICE, Paterson, N.J.

*Docket No. 96-1247; Submitted on the Record;
Issued June 25, 1998*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

The Board has duly reviewed the case record in the present appeal and finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On November 2, 1983 appellant, then a senior "C.F.S." clerk, filed a traumatic injury claim (Form CA-1) alleging that on October 21, 1983, she injured her back while lifting a tray of mail to bring to a computer. Appellant stopped work on October 21, 1983. Appellant returned to work on March 5, 1984 for four hours of limited duty per day.

The Office accepted appellant's claim for acute lumbosacral strain.

On July 26, 1984, appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability on June 18, 1984. Appellant stopped work on June 18, 1984 and returned to work on June 25, 1984.

On May 23, 1986, appellant filed a Form CA-2a alleging that on January 7, 1985 she sustained a recurrence of disability. Appellant stopped work on January 7, 1985 and returned to work on March 25, 1985.

By decision dated May 9, 1988, the Office terminated appellant's compensation benefits on the grounds that she refused suitable alternate work. In a letter dated May 21, 1988, appellant requested an oral hearing before an Office representative.

By decision dated July 28, 1988, the hearing representative remanded the case to the Office to resolve the conflict in medical opinion regarding the issue whether appellant had any continuing disability. On remand, the Office terminated appellant's compensation benefits effective May 7, 1989 in a decision dated May 12, 1989.

In a May 17, 1989 letter, appellant requested a hearing before an Office representative. In a February 22, 1990 letter, appellant requested cancellation of the scheduled hearing. By letter dated March 14, 1990, the Office granted appellant's request. In an April 26, 1990 letter, appellant again requested reconsideration of the Office's May 12, 1989 decision.

By decision dated July 31, 1990, the Office denied appellant's request for modification based on a merit review of the claim based on the medical opinion of Dr. William Head, a Board-certified neurologist and psychiatrist, and impartial medical examiner, that appellant no longer had any disability causally related to the October 21, 1983 employment injury. In a letter dated April 1, 1991, appellant requested reconsideration of the Office's decision.

By decision dated June 27, 1991, the Office denied appellant's request for modification based on a merit review of the claim. In a June 1, 1992 letter, appellant requested reconsideration of the Office's decision.

By decision dated August 27, 1992, the Office denied appellant's request for modification based on a merit review of the claim. Appellant requested reconsideration of the Office's decision in a July 22, 1993 letter.

By decision dated October 27, 1994, the Office denied appellant's request for modification based on a merit review of the claim. In an October 22, 1995 letter, appellant requested reconsideration of the Office's decision.

By decision dated December 27, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was found to be repetitious and was insufficient to warrant review of the prior decision.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ Inasmuch as appellant filed his appeal with the Board on March 19, 1996, the only decision properly before the Board is the Office's December 27, 1995 decision denying appellant's request for reconsideration.

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Section 10.138(b)(1) of the Code of Federal 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 a fact not previously considered by the Office, or (3) 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

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); *see also* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² *Thankamma Mathews*, 44 ECAB 765 (1993); *see also* 20 C.F.R. § 10.138(b)(1).

requirements, the Office will deny the application for review without review of the merits of the claim.³

On appeal, appellant contends that she has a continuing psychological disability causally related to the October 21, 1983 employment injury and that Dr. Head is a contract physician for the employing establishment. Previously, appellant advanced these arguments which were considered by the Office in its October 27, 1994 decision.

In support of her October 22, 1995 request for reconsideration, appellant submitted the October 18, 1995 medical report of Dr. Stanley E. Prentice, a Board-certified neurologist and psychiatrist. In his report, Dr. Prentice revealed appellant's employment injury, medical treatment, education and family histories, a review of medical records, and his findings regarding appellant's mental and physical status. Dr. Prentice diagnosed mild to moderate not otherwise specified depressive disorder associated with anxiety relative to appellant's life situation, chronic pain disorder associated with both psychological factors and a general medical condition, and dependent personality disorder. Dr. Prentice stated that obesity was now fully recognized as a mechanism perpetuating, intensifying and possibly causing back pain, and that many, if not most, orthopedic specialists would agree that if appellant lost 30-50 pounds or more or came near a weight compatible with her height, then appellant might have considerably less back pain. Dr. Prentice noted that he was surprised that so little attention was given to appellant's weight problem. Dr. Prentice stated that he disagreed with Dr. Head's medical opinion that appellant had a factitious disorder, because there was very little evidence to support this diagnostic entity. Dr. Prentice stated that Dr. Head failed to provide factual data to support his diagnosis and that there was no evidence to establish that appellant wished to be a patient. Dr. Prentice further stated that there was no evidence that Dr. Head's report was evaluated or read by a panel of expert clinicians and that Dr. Head spent considerable time with appellant. Dr. Prentice also stated that Dr. Head's report was redundant and contained questionable conclusions inasmuch he conducted a psychiatric evaluation and a full neurological study within a 40 minute interval. Additionally, Dr. Prentice stated that there was evidence of a genuine back disorder of objective clinical significance. Dr. Prentice concluded that appellant suffered a clinically significant injury to her back on October 21, 1983. Dr. Prentice further concluded that the "occult" may be applicable in this case due to problems of obesity and possibly diabetes with subsequent injury to nerve roots which contributed to chronic pain. In addition, Dr. Prentice concluded that early disbelief of appellant's complaints may have discouraged an appropriate therapeutic effort with continued irritation adding to appellant's problem. Dr. Prentice then recommended that appellant undergo appropriate rehabilitation, including attention to weight and appropriate physiotherapy, which may allow appellant to attain improved functional capacity with diminished pain. Dr. Prentice's report failed to address whether appellant had any continuing disability causally related to the October 21, 1983 employment injury. Rather, Dr. Prentice attributed appellant's continuing back disability to obesity and possible diabetes.

In an addendum to his medical report, Dr. Prentice noted an allegation made by Ventura Valez, appellant's husband, that Dr. Head was not an impartial medical specialist, rather Dr. Head was under contract with the employing establishment. As previously discussed, this

³ 20 C.F.R. § 10.138(b)(2).

argument was previously considered by the Office in its October 27, 1994 decision. Further, Dr. Prentice restated the opinion of Dr. Hugo N. Lijtmaer, a Board-certified psychiatrist and neurologist, as provided in his May 1, 1989 medical report that appellant had chronic and persistent L-5 radiculopathy of the right leg as a result of the 1983 employment injury. Dr. Prentice also restated the opinion of Dr. Horia H. Schwartz, a Board-certified physiatrist, as provided in a March 7, 1991 medical report that his findings were consistent with appellant's complaints and the peculiarities of appellant's employment, that there was a direct causal relationship between appellant's back condition and the October 1983 employment injury, and that appellant had no preexisting conditions or congenital problems. This evidence is already contained in the case record and was previously reviewed by the Office,⁴ thus this evidence does not constitute a basis for reopening appellant's case under section 10.138.⁵

In further support of her October 22, 1995 request for reconsideration, appellant submitted a November 28, 1994 letter to the employing establishment requesting that she be returned to work for four hours per day. The Board finds that this evidence is not relevant to the issue in this case, whether the Office met its burden of proof in terminating appellant's compensation benefits. Evidence that does not address the relevant issue involved in the case does not constitute a basis for reopening a claim.⁶

Appellant has failed to establish that the Office erroneously applied or interpreted a point of law or to advance a point of law or fact not previously considered by the Office. Additionally, appellant has failed to submit any new and relevant evidence to substantiate that she had any continuing disability causally related to the October 21, 1983 employment injury.⁷ Therefore, the Board finds that the Office was not required to review the merits of appellant's claim.⁸

The December 27, 1995 decision of the Office of Workers' Compensation Programs is hereby affirmed.

⁴ Dr. Schwartz' March 7, 1991 medical report was specifically reviewed by the Office in its June 27, 1991 decision.

⁵ *Richard L. Ballard*, 44 ECAB 146 (1992).

⁶ *Ernest J. LeBreux*, 42 ECAB 736 (1991).

⁷ On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision. See 20 C.F.R. § 501.2(c).

⁸ *Nora Favors*, 43 ECAB 403 (1992).

Dated, Washington, D.C.
June 25, 1998

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member