

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARTI K. ROBINSON and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Detroit, Mich.

*Docket No. 96-2236; Submitted on the Record;
Issued March 13, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of her claim.

This case has previously been before the Board on appeal on two occasions. In its decision and order on the most recent appeal, issued on May 23, 1995, the Board found that the medical evidence established that appellant's disability causally related to factors of her employment ended by February 5, 1994.¹ By letter received by the Office on January 12, 1996, appellant requested reconsideration and contended that she was still disabled since she could not return to work at the employing establishment or earn equivalent wages. Appellant submitted a report dated December 15, 1995 from Dr. David J. Olen, a Board-certified psychiatrist, who had previously examined and treated appellant from November 1989 to February 1991. In his December 15, 1995 report, Dr. Olen stated that appellant "remains disabled in regards to working at the post office. She continues to have an inability to do shift work, and to be unable to work around excessive loud noise and the difficult physical environment." Dr. Olen also stated, "[A]t this time ... she is fully recovered from her depression and is not suffering any psychiatric illness, at all." Dr. Olen then stated, "She would run an unacceptable risk of relapse if she attempted to return to the post office." Dr. Olen concluded: "Her medical condition is a traumatic stress disorder that while quiescent now would likely flare up if reexposed to the original cause (post office employment). This medical condition has persisted since 1988 and continues to this day and will continue indefinitely. Her inability to render useful and efficient service arose while employed at the post office."

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

¹ Docket No. 95-257.

pertinent evidence not previously considered by the Office. 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 claim. 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.² Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.³

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim.

The contentions appellant made in her January 12, 1996 request, for reconsideration were previously considered by the Office and do not show that the Office erroneously applied or interpreted a point of law. The employing establishment's refusal to reemploy appellant does not show that the Office erroneously determined that her employment-related disability ended.

Appellant has submitted evidence not previously considered by the Office, namely, a report dated December 15, 1995 from a Board-certified psychiatrist, Dr. Olen. The Board finds, however, that this evidence is not relevant and pertinent to the issue of continuing disability. Dr. Olen's December 15, 1995 report, found that appellant had fully recovered from her depression and was not suffering from a psychiatric illness. He noted, however, that appellant had a traumatic stress disorder that had persisted since 1988 but which was quiescent and which might flare up, causing a relapse should appellant return to work at the employing establishment. The Board concludes that Dr. Olen addresses the possibility of a future injury should appellant return to work. As the fear of a future injury is not compensable,⁴ Dr. Olen's December 15, 1995 report is not relevant and pertinent to appellant's claim.

² *Eugene F. Butler*, 36 ECAB 393 (1984).

³ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁴ *Mary A. Geary*, 43 ECAB 300 (1991).

The decision of the Office of Workers' Compensation Programs dated February 6, 1996 is affirmed.

Dated, Washington, D.C.
March 13, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member