

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAMONA MUSCHIO and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Holtsville, N.Y.

*Docket No. 96-1202; Submitted on the Record;
Issued May 14, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for review of the merits on June 16, 1995.

The Board has duly reviewed the case on appeal and finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits on June 16, 1995.

Appellant filed a claim on May 23, 1994 alleging that on May 11, 1994 she injured her back lifting a bucket of correspondence. The Office denied appellant's claim by decision dated October 25, 1994 finding that she failed to submit sufficient medical evidence to establish a causal relationship between her diagnosed back condition and her employment incident. Appellant submitted additional factual and medical evidence and requested reconsideration on October 31, 1994. The Office reviewed appellant's claim on the merits on December 5, 1994 and found that the medical evidence submitted was not sufficient to warrant modification of its prior decision. Appellant requested reconsideration on May 1, 1995 and by decision dated June 16, 1995, the Office declined to reopen appellant's claim for review of the merits.

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.¹ 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 review the merits of the claim.²

¹ 20 C.F.R. § 10.138(b)(1).

² 20 C.F.R. § 10.138(b)(2).

Appellant attempted to submit relevant and pertinent evidence not previously considered by the Office. Appellant submitted factual evidence. However, as the Office denied appellant's claim based on a failure of the medical evidence to establish a causal relationship between her diagnosed back condition and her accepted employment incident, this evidence is not relevant and is not sufficient to require the Office to reopen appellant's claim for review of the merits.

Appellant also submitted additional evidence in the form of physical therapy notes. As a physical therapist is not a physician for the purposes of the Federal Employees' Compensation Act, these notes do not constitute medical evidence and are not sufficient to require the Office to reopen appellant's claim for review of the merits.³

Appellant submitted several notes and reports from Dr. Robert L. Bernzweig, a Board-certified orthopedic surgeon. However, these notes and reports are restatements of evidence from Dr. Bernzweig considered by the Office in reaching its prior merit decisions. Appellant also resubmitted copies of the medical evidence reviewed by the Office in its prior decisions. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.⁴

Appellant submitted a note dated January 27, 1995 from Dr. Steven A. Mintzer, a Board-certified obstetrician and gynecologist, stating that appellant would be off work. As this note did not provide a diagnosis or any opinion regarding the condition causing appellant's disability, it is not relevant to the issue for which the Office denied appellant's claim, the lack of rationalized medical opinion evidence supporting a causal relationship between appellant's diagnosed back injury and her accepted employment incident.

As appellant has failed to submit any relevant new evidence, the Office properly declined to reopen her claim for consideration of the merits.

³ *Jane A. White*, 34 ECAB 515 (1983).

⁴ See *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

The decision of the Office of Workers' Compensation Programs dated June 16, 1995 is hereby affirmed.

Dated, Washington, D.C.
May 14, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member