

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID E. BEERS and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, Washington, D.C.

*Docket No. 96-1886; Submitted on the Record;
Issued May 11, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying merit review pursuant to 5 U.S.C. § 8128(a) on March 16, 1995.

The Board has duly reviewed the case record and finds that the Office did not abuse its discretion in this case.

In the present case, the Office had accepted that appellant sustained thoracic, left shoulder and left ankle strains as a result of an automobile accident occurring in the performance of duty on February 28, 1991. In August 1992 the Office received a report from appellant's treating physician, Dr. H. Paul Bauer, a Board-certified orthopedic surgeon, that appellant had undergone left knee surgery on April 27, 1992, which was causally related to the accepted employment injury. Dr. Bauer also noted that he had previously performed an arthroscopic outpatient surgical procedure on appellant's left knee on September 12, 1985. Appellant's postoperative diagnosis at that time was internal derangement of the left knee, badly torn posterior horn medial meniscus, severely damaged articular surface medial femoral condyle and severely damaged articular surface of the patella, with spurring and large fibrotic plica. The Office obtained a medical report from an Office medical adviser, Dr. Ned M. Shutkin, a Board-certified orthopedic surgeon, dated November 6, 1992 who opined that appellant's left knee pathology had been present since 1979 and was in no way related to the 1991 automobile accident. The Office denied appellant's claim by decisions dated February 17, 1993 and February 23, 1994.

On February 21, 1995 appellant requested that the Office reconsider his case. Appellant also alleged that while he had thought his first surgical procedure was performed in 1979, and may have so informed physicians in 1992, Dr. Bauer's records indicated that the initial surgical procedure was only performed in 1985. In support of this request for reconsideration appellant submitted another report from him. Dr. Bauer indicated in his report dated February 8, 1994, received in support of appellant's reconsideration request, that during the February 28, 1991

automobile accident, which almost totaled appellant's vehicle, that appellant was wearing his seat belt which prevented him from hitting the front windshield with his head. However, appellant's seat reportedly came loose forcing him into the dashboard and further injuring his left knee. He opined that the injury to appellant's knee was commensurate with the severity of the automobile accident and that it was not abnormal for an injury of this type to appear after a year or longer period of time. Dr. Bauer stated that appellant suffered other injuries in his body including his ankle which "sort of masked the problem with the knee." The Office denied appellant's application for review by decision dated March 16, 1995.

The Board finds that the Office did not abuse its discretion by denying merit review on March 16, 1995.

The Board's jurisdiction is limited to review of decisions issued no longer than one year prior to the date of an appeal. The Board therefore lacks jurisdiction to review the decisions of the Office dated February 17, 1993 and February 23, 1994 which reviewed the merits of appellant's claim. The Board's jurisdiction extends only to review of the decision dated March 16, 1995 which denied appellant's application for review.¹

The Office's regulations at 20 C.F.R. § 10.138(b)(1) provide that a claimant may obtain a 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 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.²

In support of his request for reconsideration, appellant was requested to submit new and relevant evidence that his left knee condition, which required surgery in 1992, was causally related to his February 28, 1991 employment injury. Appellant's allegation that he may have misstated the date of his initial left knee surgery as 1979 instead of 1985 is not relevant to the issue of causal relationship between appellant's knee condition in 1992 and the 1991 employment injury. Allegations or evidence which do not address the particular issue involved do not constitute a basis for reopening a case.³ Likewise, the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁴ In his February 8, 1994 report, Dr. Bauer merely restated his previous findings and conclusions. Dr. Bauer's previous reports had been determined to be of limited probative value as they did not discuss the progress of appellant's preexisting condition, after the initial surgery in 1985. Dr. Bauer did not provide any new evidence to support a finding that appellant's current left condition was causally related to his 1991 employment injury, rather than to his

¹ 20 C.F.R. § 501.3(d)(2).

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

³ *Mary Lou Barragy*, 46 ECAB 781 (1995).

⁴ *Sandra B. Williams*, 46 ECAB 546 (1995).

preexisting condition. As appellant did not submit the necessary new and relevant evidence, did not show that the Office erroneously applied or interpreted a point of law, and did not advance a point of law or fact now previously considered by the Office, the Office did not abuse its discretion by denying merit review.

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

Dated, Washington, D.C.
May 11, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member