

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DALE A. JACKSON and DEPARTMENT OF THE INTERIOR,  
CASTILLO DE SAN MARCOS, St. Augustine, Fla.

*Docket No. 96-2131; Submitted on the Record;  
Issued May 20, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

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

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The Office accepted appellant's claim for a subluxation at T12 and L5. Following a February 4, 1993 employment injury, appellant missed some work, then returned to his regular employment as a motor vehicle operator from April 1993 to November 1994, when he stopped working and has not returned.

On December 6, 1994 appellant filed a claim for a recurrence of disability, Form CA-2a, alleging that on November 25, 1994, he loss the use of his legs while getting out of his bed and believed this was due to the February 4, 1993 employment injury. By decision dated March 13, 1995, the Office denied appellant's claim for a recurrence of disability, finding that the evidence of record failed to establish that the claimed medical condition was causally related to the February 4, 1993 employment injury.

By letter dated March 12, 1996, appellant requested reconsideration of the Office's March 13, 1995 decision. Appellant submitted a six-page brief to support his request.

By decision dated May 23, 1996, the Office denied the request, finding that the evidence appellant submitted was irrelevant and immaterial.

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.<sup>1</sup> As

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

appellant filed the appeal with the Board on July 1, 1996, the only decision properly before the Board is the May 23, 1996 decision denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees' Compensation Act,<sup>2</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> Evidence that does not address the particular issue involved, in this case whether appellant's current back condition is causally related to the February 4, 1993 employment injury, does not constitute a basis for reopening the case.<sup>6</sup>

In the present case, appellant did not submit any additional medical evidence to support his claim. In his six-page brief, he essentially asserts that the medical evidence he previously submitted contained sufficient medical rationale to establish that his current back condition is causally related to the February 4, 1993 employment injury or, in the alternative, he should be referred to an impartial medical specialist for another evaluation. His interpretation of the medical evidence does not show that the Office erroneously applied or interpreted a point of law or advanced a point of law or a fact not previously considered by the Office. His brief therefore does not constitute evidence sufficient to establish an abuse of discretion by the Office in denying his request for reconsideration.

As appellant has not established that the Office abused its discretion in its May 23, 1996 decision by denying appellant's request for a review on the merits of its March 13, 1995 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, that he advanced a point of law or a fact not previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 20 C.F.R. § 10.138(b)(1) and (2).

<sup>4</sup> 20 C.F.R. § 10.138(b)(2).

<sup>5</sup> *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>6</sup> *Richard L. Ballard*, *supra* note 5 at 150; *Edward Mathew Diekemper*, 31 ECAB 224, 225 (1979).

Accordingly, the decision of the Office of Workers' Compensation Programs dated May 23, 1996 is hereby affirmed.

Dated, Washington, D.C.  
May 20, 1998

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member