

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HOSEY L. WHITMORE and U.S. POSTAL SERVICE,  
LAMAR CARRIER ANNEX, Memphis, Tenn.

*Docket No. 97-33; Submitted on the Record;  
Issued November 23, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On June 20, 1989 appellant, then a 34-year-old letter carrier, was driving a postal jeep when it was struck by a car that had gone through a stop sign. Appellant stopped working on June 20, 1989 and returned to work on June 27, 1989. The Office accepted appellant's claim for multiple injuries. On September 6, 1989 appellant slipped on steps while delivering mail, causing him to twist his back. On December 1, 1989 appellant filed a claim for recurrence of disability effective November 25, 1989, stating that slight pain that he had incurred as a result of the June 20, 1989 employment injury had become worse. The Office accepted appellant's claim for recurrence of cervical strain and rotator cuff sprain.

In a December 22, 1992 decision, the Office issued a schedule award for a 14 percent permanent impairment of the right arm. In an August 19, 1993 merit decision, the Office denied appellant's request for modification of the December 22, 1992 decision. Appellant filed an appeal which was docketed on November 24, 1993. In an August 21, 1995 decision, the Office rejected appellant's claim for compensation after June 22, 1993 on the grounds that the medical evidence of record did not establish that the time he lost from work was due to employment-related conditions. In a September 25, 1995 decision, the Board found that the Office's December 22, 1992 decision did not take into account whether appellant had additional permanent impairment due to pain and loss of strength. It therefore set aside the December 22, 1992 and August 19, 1993 decisions and remanded the case for further development.<sup>1</sup> Appellant appealed from the August 21, 1995 decision which was filed on October 24, 1995. The appeal was subsequently dismissed on appellant's request to withdraw his appeal in order to seek

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<sup>1</sup> Docket No. 94-630 (issued September 25, 1995). The Office has not issued a final decision on this issue after the remand by the Board.

reconsideration before the Office.<sup>2</sup> In a May 15, 1996 letter, appellant requested reconsideration of the Office's August 21, 1995 decision. In a July 17, 1996 decision, the Office denied appellant's request for reconsideration on the grounds that appellant had not submitted new and relevant medical evidence nor presented a substantive legal argument not previously considered and therefore his request was insufficient to warrant review of the prior decision.

Appellant's appeal was docketed on September 17, 1996. The jurisdiction of the Board is limited to final decisions of the Office that were issued within one year prior to the docketing of an appeal with the Board.<sup>3</sup> The Board therefore can only consider appellant's August 21, 1995 decision.

The Board finds that the Office properly denied appellant's request for reconsideration.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or 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.<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 also does not constitute a basis for reopening a case.<sup>6</sup>

Appellant submitted medical documents to the Office which were received on June 25, 1996. Among the documents was a March 8, 1996 report on a magnetic resonance imaging (MRI) scan of the lumbar spine which showed severe spinal stenosis at L4-L5 with a herniated disc. An MRI scan of the cervical spine, taken the same date, showed spondylosis, degenerative disc disease from C4 through T1 and spinal stenosis with possible root compression on the left side at C6-C7. In a March 6, 1996 letter, the employing establishment granted appellant limited duty under restrictions of continuous sitting and walking, 8 hours a day with intermittent lifting of 10 to 20 pounds and bending for 2 to 3 hours a day, intermittent squatting and kneeling 4 hours a day, intermittent climbing and twisting 2 hours a day, intermittent standing 6 hours a day and occasional reaching above the shoulder. In an April 1, 1996 report, Dr. Lloyd Robinson, a Board-certified family practitioner, stated that appellant had popping of the left shoulder consistent with an old rotator cuff injury and tenderness over the dorsum of the left hand with a small ganglion cyst. He reviewed a functional capacity evaluation and concluded that appellant could lift up to 50 pounds, with no repetitive overhead work and limited repetitive motion of the left arm due to the cyst. Appellant also submitted office notes from some of his treating

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<sup>2</sup> Docket No. 96-210 (Order Dismissing Appeal, issued April 22, 1996).

<sup>3</sup> 20 C.F.R. § 501.3.

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

<sup>5</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

<sup>6</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

physicians. A review of the medical evidence submitted by appellant shows that while he complained of pain with some objective evidence from the MRI scans on the source of pain, none of the physicians of record directly related appellant's condition to his accepted employment injuries. Therefore, appellant did not submit any relevant medical evidence that showed he had any disability after June 22, 1993 that was causally related to the employment injury. As appellant did not submit relevant medical evidence in support of his request for reconsideration, the Office properly denied his request for reconsideration.

On appeal, appellant's representative argued that, as appellant's case was on appeal at the time of the Office's August 21, 1995 decision, the decision of the Office was null and void. The Board has held that the Office and the Board cannot have concurrent jurisdiction over the same issue in the same case.<sup>7</sup> In this case, however, the Board and the Office were considering different issues in appellant's case. The Board was reviewing appellant's appeal from the December 22, 1992 decision on appellant's schedule award while the Office was considering appellant's claim for compensation for the period after the end of the schedule award. As these were different issues, the Board and the Office did not have concurrent jurisdiction over the same issue in appellant's case. The Office therefore had the appropriate jurisdiction and authority to issue the August 21, 1995 decision.

The decision of the Office of Workers' Compensation Programs, dated July 17, 1996, is hereby affirmed.

Dated, Washington, D.C.  
November 23, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>7</sup> *Douglas Billings*, 41 ECAB 880 (1990).