

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PEGGY J. HART and TENNESSEE VALLEY AUTHORITY,  
DIVISION OF MEDICAL SERVICES, Chattanooga, Tenn.

*Docket No. 97-371; Submitted on the Record;  
Issued November 3, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
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 lumbar strain, lumbosacral facet joint syndrome and depression. On October 3, 1994 appellant filed a claim for a recurrence of disability, Form CA-2a, commencing August 26, 1994. Appellant resigned on October 16, 1994 in order to receive incentive and severance pay. By decision dated August 17, 1995, the Office denied the claim, stating that the evidence of record failed to establish that the accepted condition resulted in total disability for work on or after October 16, 1994.

In an undated letter received by the Office on August 12, 1996, appellant requested reconsideration of the Office's decision. In support of her request, appellant submitted a disability note dated July 27, 1987 from Dr. Walter H. King, a Board-certified orthopedic surgeon, a disability note whose date is illegible from Dr. Robert H. Cofer, a Board-certified internist, a hospital admission form dated September 20, 1989 and a progress note dated September 20, 1989 from a physical therapist. Appellant also submitted progress notes dated from January 22 to March 20, 1996 from Goldsmith & Associates, a clinical psychology service, medical reports from Dr. Robert L. Sendele, a Board-certified orthopedic surgeon, dated February 13 and February 20, 1996 a hospital record dated August 2, 1996 and a personal letter dated August 12, 1996.

By decision dated September 3, 1996, the Office denied appellant's reconsideration request.

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 appellant filed the appeal with the Board on October 28, 1996, the only decision properly before the Board is the September 3, 1996 decision denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the 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 sustained recurrence of disability commencing August 26, 1994 causally related to the April 30, 1997 employment injury, does not constitute a basis for reopening the case.<sup>6</sup>

The September 20, 1989 progress note from the physical therapist was previously submitted and therefore is repetitious. The disability notes from Dr. King dated July 27, 1987 and from Dr. Cofer, the September 20, 1989 hospital admission form, the progress notes dated from January 22 to March 20, 1996, and the August 2, 1996 hospital record do not address whether appellant's current condition is causally related to the April 30, 1987 employment injury and therefore are not relevant. Dr. Sendele's reports dated February 13 and 20, 1996 also do not address causation and are not relevant.

Appellant has not established that the Office abused its discretion in its September 3, 1996 decision by denying appellant's request for a review on the merits of its August 17, 1995 decision under section 8128(a) of the Act because she has failed to show that the Office erroneously applied or interpreted a point of law or advanced a point of law not previously considered by the Office or that she submitted relevant and pertinent evidence not previously considered by the Office.

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

<sup>2</sup> 5 U.S.C. § 8181 *et seq.*

<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 September 3, 1996 is hereby affirmed.

Dated, Washington, D.C.  
November 3, 1998

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member