

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARION J. HOLMES and U.S. POSTAL SERVICE,  
POST OFFICE, Plymouth, Mass.

*Docket No. 96-2329; Submitted on the Record;  
Issued September 2, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for review of the merits of her claim under 5 U.S.C. § 8128.

The only Office decision before the Board on this appeal is the Office's April 5, 1996 decision finding that appellant's application for review was not sufficient to warrant review of its prior decision. Since more than one year elapsed between the date of the Office's most recent merit decision on January 25, 1995 and the filing of appellant's appeal on July 17, 1996, the Board lacks jurisdiction to review the merits of appellant's claim.<sup>1</sup>

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain 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

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<sup>1</sup> 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office final decision being appealed.

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. 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>2</sup> Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>3</sup>

In the present case, the Office, by decision dated January 25, 1995, terminated appellant's compensation effective February 5, 1995 on the basis that she had no residual disability from her employment-related injury of July 15, 1983. This decision was based on the conclusions of Dr. Philip I. Salib, the Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion, contained in reports dated October 6 and September 21, 1994.

Appellant's January 23, 1996 request for reconsideration was accompanied by a copy of an October 5, 1987 decision of an administrative judge at the Merit Systems Protection Board (MSPB) that appellant was entitled to disability retirement and by the results of magnetic resonance imaging (MRI) done on January 12, 1995. The Office had not previously considered this evidence, but it is not sufficient to require reopening of the claim for further review of the merits of appellant's claim because it is not relevant to the basis of termination of compensation. Compensation was terminated not on the basis that appellant was no longer disabled, but rather on the basis that her continuing disability was not causally related to her accepted employment injury. Neither the MSPB decision nor the results of the MRI addresses whether appellant's continuing disability is causally related to her accepted employment injury, and they thus are not relevant and not sufficient to require reopening of appellant's case for further review of the merits of her claim.

In the January 23, 1996 request for reconsideration, appellant, through her attorney, contends that the reports of Dr. Salib are not well reasoned, and do not address the opinion of appellant's attending physician, Dr. Alfred S. Krebs, a Board-certified orthopedic surgeon, that appellant's employment injury aggravated her degenerative disc disease. The Office had previously considered the weight to be afforded Dr. Salib's reports and disagreeing with the Office's assessment of the weight of a particular piece of evidence does not advance a point of law or fact not previously considered by the Office. The contentions in appellant's January 23, 1996 request for reconsideration are not sufficient to require that the Office reopen appellant's case for review of the merits of her claim under 5 U.S.C. § 8128.

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<sup>2</sup> *Eugene F. Butler*, 36 ECAB 393 (1984).

<sup>3</sup> *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

The decision of the Office of Workers' Compensation Programs dated April 5, 1996 is affirmed.

Dated, Washington, D.C.  
September 2, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member