

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE SMITH and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Trenton, N.J.

*Docket No. 97-1823; Submitted on the Record;
Issued April 12, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
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.

On November 12, 1993 appellant filed an occupational disease claim alleging that she experienced stress after being assaulted by a coworker. The Office accepted appellant's claim for an acute reaction to stress.

By decision dated January 26, 1994, the Office terminated appellant's compensation benefits effective February 1, 1994 on the grounds that the medical evidence was insufficient to establish continuing employment-related disability. In a decision dated November 20, 1995, a hearing representative affirmed the Office's January 26, 1994 decision.

Appellant requested reconsideration and submitted additional medical evidence. By decision dated February 12, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was duplicative and cumulative and thus insufficient to warrant review of its prior decision.

The Board finds that the Office abused its discretion by refusing to reopen appellant's case for review of the merits pursuant to 5 U.S.C. § 8128(a).

The only decision over which the Board has jurisdiction is the February 12, 1997 decision which denied appellant's request for a review of the merits of the case. Because more than one year has elapsed between the issuance of the Office's decision dated November 20, 1995 and May 6, 1997, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review that decision.¹

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by written request to the Office identifying the decision

¹ See 20 C.F.R. §§ 501.2(c), 501.3(d).

and the specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

“(i) Showing that the Office erroneously applied or interpreted a point of law, or

“(ii) Advancing a point of law or fact not previously considered by the Office; or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”²

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.³ Evidence that repeats or duplicates evidence already in the case record has no evidentiary values and does not constitute a basis for reopening a case.⁴ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁵

The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence which may be necessary to discharge her burden of proof.⁶ The requirements pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.⁷ If the Office should determine that the new evidence submitted lacks substantive probative value, it may deny modification of its prior decision, but only after the case has been reviewed on the merits.⁸

In support of her request for reconsideration, appellant submitted a medical report dated September 5, 1995 from Dr. Ronald Willoughby, an osteopath and her attending physician,

² 20 C.F.R. § 10.138(b)(1).

³ See 20 C.F.R. § 10.138(b)(2).

⁴ *Daniel Deparini*, 44 ECAB 657 (1993).

⁵ *Id.*

⁶ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

⁷ See 20 C.F.R. § 10.138(b).

⁸ *Dennis J. Lasanen*, 41 ECAB 933 (1990).

which was already of record. Copies of evidence previously considered by the Office are repetitive in nature and therefore insufficient to warrant a merit review of the case.⁹

Appellant further submitted a report from Dr. Willoughby dated November 1, 1996, in which he discussed his treatment of appellant after the February 1993 assault by her coworker. He diagnosed an adjustment disorder with anxious mood and stated:

“I believe that her disability was caused solely by her assault, rendering her totally unable to function in her workplace between February 18, 1993 and January 26, 1996. The length of her disability was due to the frequent flashbacks and panic episodes she suffered as she was repeatedly made to recall the episode at hearings and because of her observation during these site visits that no security improvements had been undertaken.”

The record does not contain a prior report from Dr. Willoughby discussing specific periods of disability or detailing the factors to which he attributed disability. As this report was not previously of record and is relevant to the issue of whether appellant had continuing disability to her accepted employment injury after February 1994, it is sufficient to require the Office to conduct a merit review of the case. Therefore, the case shall be remanded to the Office to review the entire case record. After such further development as is deemed necessary, the Office shall issue a *de novo* decision on the merits of the case.

The decision of the Office of Workers' Compensation Programs dated February 12, 1997 is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
April 12, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁹ *Eugene F. Butler*, 36 ECAB 393 (1984) (where the Board held that 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).