

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNIE J. PARRISH and U.S POSTAL SERVICE,
POST OFFICE, Jersey City, NJ

*Docket No. 98-688; Submitted on the Record;
Issued December 21, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

Appellant, a 48-year-old clerk, injured her lower back while lifting mail on March 2, 1990. Appellant filed a claim for benefits on March 5, 1990, which the Office accepted for lumbosacral strain. Appellant worked intermittently until August 6, 1990 and has not worked since that time. The Office paid appellant compensation for temporary total disability for appropriate periods and placed her on the periodic rolls.

On October 20, 1994 appellant was examined by Dr. Ganga R. Sharma, Board-certified in internal medicine and appellant's treating physician. In a report dated October 21, 1994, Dr. Sharma stated that appellant had not been able to work since March 1990 and had lower back pain, which radiated down both legs. He advised that appellant had undergone a magnetic resonance imaging (MRI) scan, the results of which were consistent with spinal stenosis. Dr. Sharma also diagnosed chronic lower back pain which was post-traumatic and persistent and stated that there had been no improvement in her condition despite being treated with physical therapy and anti-inflammatory medication. He concluded that appellant was totally disabled and that her disability was likely to be permanent.

In order to clarify appellant's current condition, the Office scheduled a second opinion examination with Dr. Arthur T. Canario, a Board-certified orthopedic surgeon. In his April 14, 1995 report, Dr. Canario stated that appellant's MRI showed some moderate spinal stenosis at L4-5 but no disc herniation. He stated that upon examination, appellant had multiple complaints but showed clear evidence of nonorganic symptoms or symptom magnification. Dr. Canario opined that appellant had sustained only a minor back strain. He advised that appellant had not worked in five years but was employable throughout this entire time with the exception of a

reasonable period in which to recover from a soft tissue injury of six to eight weeks. He concluded that appellant could return to work and would be employable in any job.

By letter dated April 25, 1997, the Office advised appellant that it had determined a conflict existed in the medical evidence between the opinion of Dr. Sharma,¹ appellant's treating physician and the opinion of Dr. Canario as to whether appellant had any continuing, residual disability causally related to her March 2, 1990 employment injury and referred her for a referee medical examination with Dr. Micheal J. Bercik, a Board-certified orthopedic surgeon, pursuant to section 8123(a).²

In a report dated October 16, 1995, Dr. Bercik reviewed the statement of accepted facts and appellant's medical records and stated that she had a normal neurologic examination of the lower extremities. Dr. Bercik stated that appellant's MRI scan was unremarkable with the exception of minimal disc degeneration at L4-5. He advised that appellant had a postlumbosacral sprain. He stated:

“In my opinion in regards to the lumbosacral sprain apparently sustained by [appellant] as a result of the work accident of March 2, 1990, the prognosis is good. [Objectively] there are no objective findings on examination to correlate with her subjective complaints. In my opinion, she has reached the maximal benefit of treatment. In my opinion, the patient has sustained no permanent physical impairment and may resume regular work activities without limitation.”

In a proposed notice of termination dated December 28, 1995, the Office, based on the opinion of Dr. Bercik, found that the weight of the medical evidence demonstrated that appellant had no continuing disability causally related to her March 2, 1990 employment injury.

In response, appellant submitted a January 15, 1996 letter, indicating that she continued to suffer lower back pain and disability which precluded her from returning to gainful employment.

By decision dated February 13, 1996, the Office terminated appellant's compensation effective March 3, 1996, finding that the weight of the medical evidence established that the appellant had no continuing disability resulting from the March 2, 1990 employment injury.

By letter dated February 23, 1996, appellant requested an oral hearing. In support of her request, appellant submitted February 6 and August 29, 1996 reports from Dr. Sharma, MRI scan results dated April 28 and July 7, 1996 and an April 16, 1996 report from Dr. Yashwant Bhandari, a specialist in neurological surgery. Dr. Sharma essentially reiterated his previous findings and conclusions in his reports. Dr. Bhandari stated findings on examination, diagnosed

¹ In a report dated October 31, 1995, Dr. Sharma stated that appellant continued to have lower back pain which affected her ability to work, with pain radiating down both hips due to bilateral sciatica. In a work restriction evaluation completed on the same date, Dr. Sharma advised that appellant was unable to work an eight-hour day.

² 5 U.S.C. § 8123(a).

lumbar spinal stenosis at the L4-5 level and recommended another MRI scan, but did not relate these findings to factors of appellant's employment.

By decision dated November 6, 1996, an Office hearing representative affirmed the February 13, 1996 termination decision.

By letter dated April 2, 1997, appellant requested reconsideration of the Office's previous decision. Appellant submitted an unsigned and undated Social Security form in support of her request.

By decision dated October 3, 1997, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

The only decision before the Board on this appeal is the October 3, 1997 Office decision, which found that the letter submitted in support of appellant's request for reconsideration was insufficient to warrant review of its prior decision. Since the October 3, 1997 decision is the only decision issued within one year of the date that appellant filed her appeal with the Board, December 24, 1997, this is the only decision over which the Board has jurisdiction.³

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.⁴ 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.⁵ 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.⁶

In the present case, appellant has not shown that the Office erroneously applied or interpreted a point of law; she has not advanced a point of law or fact not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. This is important since the outstanding issue in the case -- whether appellant had any continuing disability subsequent to March 3, 1996 -- is medical in nature. Additionally, appellant's April 2, 1997 letter, did not show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Although appellant generally contended that she continued to experience residual

³ See 20 C.F.R. § 501.3(d)(2).

⁴ 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ *Howard A. Williams*, 45 ECAB 853 (1994).

disability stemming from her March 2, 1990 employment injury, she failed to submit new and relevant medical evidence in support of this contention. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

The decision of the Office of Workers' Compensation Programs dated October 3, 1997 is hereby affirmed.

Dated, Washington, D.C.
December 21, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member