

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY L. MELCHIONNA and U.S. POSTAL SERVICE,
POST OFFICE, Boston, MA

*Docket No. 99-976; Submitted on the Record;
Issued December 14, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs' denial of merit review of appellant's request for reconsideration under section 8128 of the Federal Employees' Compensation Act constituted an abuse of discretion.

On June 7, 1983 appellant, then a 43-year-old letter carrier, filed a notice of traumatic injury and claim, alleging that he injured his back while in the performance of light-duty work. Appellant stopped work on that date and has not returned.¹ In a decision dated August 23, 1994, the Office terminated appellant's compensation benefits effective September 18, 1994 on the grounds that the medical evidence established that he did not have any continuing residuals of his accepted June 1983 employment injury. By decision dated and finalized April 3, 1995, an Office hearing representative affirmed the August 23, 1994 decision of the Office. In merit decisions dated February 29, 1996, April 29 and November 26, 1997, the Office denied appellant's requests for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification of the prior decisions. In a decision dated December 17, 1998, the Office denied appellant's final request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant merit review.

¹ Appellant sustained a work-related injury on May 18, 1980 and filed a prior claim in relation to that incident. The Office accepted appellant's May 1980 claim for lumbosacral strain. Appellant returned to work in a light-duty position on September 6, 1980.

The Board has duly reviewed the entire case record on appeal and finds that the Office properly denied appellant's September 29, 1998 request for reconsideration.²

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 requirements, the Office will deny the application for review without reviewing the merits of the claim.³ 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.⁴ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁵

In the present case, appellant requested reconsideration and submitted a letter from the National Association of Letter Carriers (NALC) dated September 29, 1998 and a report dated September 14, 1998 by Dr. Robert R. Pennell, a Board-certified orthopedic surgeon, in support of his request. In the letter from the NALC, the organization contends that appellant injured himself when he fell out of a swivel chair which "spun out from underneath him" while he was putting envelopes into a box on the floor. Appellant's revision of his history of injury has been previously addressed by the Office, primarily in its merit decision dated February 29, 1996 and to a lesser extent in its merit decisions dated April 29 and November 26, 1997. Thus, this argument has been previously addressed by the Office and cannot constitute as a basis for reopening the record. Similarly, the September 14, 1998 report by Dr. Pennell is substantially similar to his previous reports of record dated June 6, 1995 and September 8, 1997. The earlier reports were found to be of limited probative value as they were based on an inaccurate history of injury as described in the aforementioned NALC letter dated September 29, 1998. As he did in his September 8, 1997 report, Dr. Pennell again challenges the Office's finding that his history of injury is inaccurate, criticizes the report by Dr. Louis Meeks, a Board-certified orthopedic surgeon and Office referral physician, which was the basis for the Office's termination of compensation and reiterates that appellant has continuing disability that is causally related to his June 1983 employment injury. Therefore, this report is cumulative of the September 8, 1997 report by Dr. Pennell which was fully reviewed and discussed in the Office's merit decision dated November 26, 1997. Consequently, appellant has not provided any basis for reopening the record for merit review and the Office properly denied appellant's request for reconsideration.

² 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. As appellant filed his appeal with the Board on January 6, 1999, the only decision before the Board is the Office's December 17, 1998 decision. See 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

³ 20 C.F.R. § 10.138(b)(2).

⁴ *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

⁵ *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

The decision of the Office of Workers' Compensation Programs dated December 17, 1998 is hereby affirmed.

Dated, Washington, D.C.
December 14, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member