

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA S. BAEZA and U.S. POSTAL SERVICE,
POST OFFICE, Columbus, Ohio

*Docket No. 97-1238; Submitted on the Record;
Issued February 25, 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 abused its discretion in declining to reopen appellant's claim for merit review.

On July 11, 1994 appellant, then a 43-year-old mail handler, filed a notice of traumatic injury, claiming that she twisted her left knee when a wheel broke off a cart she was pulling. The Office accepted the claim for a left knee sprain and subsequent arthroscopy, chondroplasty and partial medial meniscectomy. Appellant returned to light duty on January 13, 1995.

Subsequently, appellant sustained a fracture of her left femur and a benign tumor was removed from the bone. Appellant's claim for wage-loss compensation from February 25, 1995 onward was denied by the Office on April 13, 1995 on the grounds that the femur fracture was not a work-related injury. The Office noted that absent this event appellant would have participated in a work hardening program and would have returned to her position as a modified mail handler as recommended by her treating physician, Dr. Sanford S. Kunkel, a Board-certified orthopedic surgeon.

On September 8, 1995 appellant filed a notice of recurrence of disability, claiming that the fracture she sustained on February 25, 1995 was in the area of her previous knee injury and that she had experienced pain and problems with her knee since the arthroscopy done by Dr. Kunkel.

On October 1, 1995 appellant requested reconsideration and submitted the August 23, 1995 report of Dr. Bruce T. Rougraff, a neurosurgeon. He treated appellant's pathological fracture of the femur through a benign aneurysmal bone cyst, a neoplastic process "which is occasionally associated with an injury." Dr. Rougraff stated that appellant had an injury on June 28, 1994, which she stated was directly in the area where she eventually developed the bone cyst. He concluded that the fracture was related to the earlier work injury.

On December 6, 1995 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant modification of its April 13, 1995 decision. The Office found that Dr. Rougraff's opinion on causal relationship lacked any reasoned discussion of how the June 1994 knee injury caused a bone cyst to form and grow, resulting in a femur fracture.

On November 28, 1996 appellant again requested reconsideration and submitted a November 11, 1996 report from Dr. Rougraff. On December 6, 1996 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was cumulative and therefore insufficient to warrant review of its prior decision.

The Board finds that the Office properly declined to reopen appellant's claim on the grounds that the evidence submitted in support of reconsideration was cumulative and therefore insufficient to warrant review.¹

Section 8128(a) of the Federal Employees' Compensation Act² provides for review of an award for or against payment of compensation. Section 10.138(b)(1) of the implementing regulation provides, in pertinent part, that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and the specific issues within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed.³

With the written request, the claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.⁴ Section 10.138(b)(2) provides that any application for review 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.⁵ Abuse of discretion by the Office is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions that are contrary to both logic and probable deductions from established facts.⁶

In this case, appellant argued that her femur fracture was related to the June 1994 work injury because a July 1994 x-ray showed no fracture or cyst and therefore it must have formed

¹ The Board's scope of review is limited to those final decisions issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c), 501.3(d)(2). Inasmuch as appellant filed her notice of appeal on March 3, 1997, the Board has jurisdiction only of the Office decision dated December 6, 1996.

² 5 U.S.C. §§ 8101-8193; 5 U.S.C. § 8128(a).

³ *Vicente P. Taimanglo*, 45 ECAB 504, 507 (1994).

⁴ 20 C.F.R. § 10.138(b)(1).

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

after the work injury. Dr. Rougraff also reasoned that the absence of a cyst in July 1994 meant that it developed over the next eight months and ultimately resulted in the femur fracture.

However, the July 1994 x-ray was taken of appellant's left knee, and the bone cyst was located on appellant's femur "in the area of her left thigh," according to Dr. Rougraff, who stated that appellant's work injury occurred "in the same area of her left femur." The work injury was not a trauma to the left thigh but rather a twisting of appellant's left knee and the December 1994 arthroscopy involved the left knee, not the left thigh. Thus, Dr. Rougraff's opinion, like his earlier report dated August 23, 1995, is based on an inaccurate fact -- that appellant's work injury was to her left thigh. As such, his latest report is cumulative and therefore insufficient to require the Office to reopen appellant's claim for merit review.⁷

In summary, appellant has not shown that the Office erroneously applied or interpreted a point of law, or advanced a point of law or fact not previously considered by the Office, or submitted relevant and pertinent evidence not previously considered by the Office. Accordingly, the Board finds that the Office did not abuse its discretion in declining to reopen appellant's claim.⁸

The December 6, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
February 25, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁷ See *James A. England*, 47 ECAB 115 (1995) (finding that material repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case).

⁸ See *Norman W. Hanson*, 45 ECAB 430, 435 (1994) (finding that the Office properly declined to reopen a claim because appellant presented no new and relevant evidence).