

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY L. CRITE and U.S. POSTAL SERVICE,
POST OFFICE, Greensboro, N.C.

*Docket No. 97-709; Submitted on the Record;
Issued January 6, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

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).

On June 6, 1994 appellant, a 42-year-old letter carrier, filed a Form CA-2 claim for benefits based on occupational disease, claiming that her duties as a mail clerk had aggravated a preexisting herniated cervical disc. Appellant alleged that she first became aware that this condition was employment related on September 7, 1993.

By decision dated May 10, 1993, the Office denied appellant's claim, finding that the medical evidence she submitted in support of her claim was not sufficient to establish that her current condition or disability was caused or aggravated by employment factors.

By letter dated October 5, 1994, appellant requested an oral hearing.

By decision dated August 17, 1995, an Office hearing representative affirmed the Office's previous decision, finding that the medical evidence she submitted in support of her claim was not sufficient to establish that her current condition or disability was caused or aggravated by employment factors. The hearing representative specifically found that appellant failed to submit a rationalized, probative medical opinion establishing that appellant's claimed condition or disability was caused by employment factors.

In a letter dated August 7, 1996, appellant's representative requested reconsideration of the Office's previous decision. Appellant's representative indicated he had attached medical evidence in support of appellant's claim, including several medical reports, work status updates, and forms which the Office had previously considered in prior decisions, in addition to three new medical reports. These included a November 9, 1995 report from Dr. Stephen C. Robinson, Board-certified in neurological surgery, a February 22, 1996 report from Dr. Rodney A.

Mortenson, a Board-certified orthopedic surgeon, and a May 27, 1996 report from Dr. Jerome O. Spruill, a specialist in cardiology and internal medicine. The reports from Drs. Robinson and Mortenson discussed findings regarding a degenerative condition in appellant's left shoulder, and although the reports from Drs. Spruill and Robinson discussed the current status of appellant's cervical disc condition, none of these reports provided an opinion as to whether appellant's current condition or disability was causally related to employment factors.

By decision dated October 18, 1996, 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 her claim under 5 U.S.C. § 8128(a).

The only decision before the Board on this appeal is the October 18, 1996 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 18, 1996 decision is the only decision issued within one year of the date that appellant filed her appeal with the Board, December 4, 1996, this is the only decision over which the Board has jurisdiction.¹

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.² 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.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

In the present case, appellant has not shown the Office erroneously applied or interpreted a point of law or fact not previously considered by the Office. Neither has she submitted relevant and pertinent evidence not previously considered by the Office. The only new medical evidence appellant submitted were the reports from Drs. Robinson, Mortenson and Spruill. None of this evidence, however, is either relevant or pertinent because none of the notes or reports contain a probative opinion from a physician which specifically addresses the cause of appellant's claimed condition. Additionally, the November 28, 1996 letter from appellant's representative did not show that the Office erroneously applied or interpreted a point of law; nor did it advance a point of law not previously considered by the Office. Although appellant generally contended that her claimed cervical condition which commenced on September 7,

¹ See 20 C.F.R. § 501.3(d)(2).

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

³ 20 C.F.R. § 10.138(b)(2).

⁴ *Howard A. Williams*, 45 ECAB 853 (1994).

1993 was caused or aggravated by employment factors, the issue in this case is medical in nature and must be addressed by a physician. Appellant failed to submit 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 October 18, 1996 Office of Workers' Compensation Programs' decision is affirmed.

Dated, Washington, D.C.
January 6, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member