

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN R. MUSKOPF and DEPARTMENT OF DEFENSE,
DMA AEROSPACE CENTER, St. Louis, Mo.

*Docket No. 97-1103; Submitted on the Record;
Issued January 20, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs' refusal to reopen appellant's case for reconsideration of the merits of his claim pursuant to section 8128(a) of the Federal Employees' Compensation Act constituted an abuse of discretion.

On December 18, 1989 appellant, then a 39-year-old laborer, filed a notice of traumatic injury and claim, alleging that he sustained an injury to his right shoulder while climbing off a tractor in the snow. By decision dated March 21, 1990, the Office indicated that it had accepted appellant's claim for right shoulder strain and surgery but denied any compensation after January 3, 1990 due to appellant's violation of his restriction against overhead work by playing tennis. On October 10, 1990 appellant filed a claim for recurrence of disability. In a decision dated April 11, 1991, an Office hearing representative determined that appellant was entitled to wage-loss compensation through the date his employment was terminated in September 1990 and that he was entitled to medial benefits through November 21, 1990. On April 22, 1992 appellant filed a claim for intermittent wage loss. In a decision dated March 23, 1993, the Office found that appellant was entitled to a schedule award for a 5 percent permanent impairment of his right upper extremity for a total of 15.6 weeks of compensation for the period of November 10, 1992 to February 27, 1993. By decision dated September 1, 1993, the Office denied appellant's claim for recurrence of disability on the grounds that the medical evidence did not establish that there was any causal relationship between appellant's claimed cervical condition and his accepted employment injury. In a decision dated October 27, 1994, an Office hearing representative reviewed additional medical evidence submitted by appellant and affirmed the Office's September 1, 1993 decision. On May 10, 1995 appellant filed a second claim for recurrence of disability beginning July 15, 1993. Appellant began work with the U.S. Postal Service in July 1993 but stopped work July 28, 1993 due to the alleged recurrence of disability. He was terminated effective October 7, 1993. On October 22, 1995 appellant requested reconsideration of the Office's September 1, 1993 and October 27, 1994 decisions. In a decision dated December 8, 1995, the Office denied appellant's claim for recurrence of

disability beginning July 15, 1993.¹ By decision dated January 10, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and immaterial and was therefore insufficient to warranted merit review of the prior decisions.

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 by letter postmarked January 8, 1997, the only decision before the Board is the Office's January 10, 1996 decision.²

The Board has fully reviewed the case record and finds that the Office properly denied appellant's request for reconsideration.

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

With his request for reconsideration, appellant submitted reports dated May 17 and October 9, 1995 by Dr. Jane Wibbenmeyer, a chiropractor, office notes and reports dated July 5, August 1, November 29 and December 17, 1994 and August 29, 1995 by his physical therapists, a progress note dated August 16, 1995 by Dr. Judson F. Martin, a general practitioner, reports dated November 23, December 8 and 15, 1994 and July 19, 1995 by Dr. Martin M. Pomphrey, a Board-certified orthopedic surgeon, office notes by Dr. Pomphrey, reports dated November 9 and 17, 1994 by Dr. Paul E. Stohr, a Board-certified neurosurgeon, and a report dated March 1, 1995 by Dr. Martin. Appellant contended that his preexisting cervical condition was aggravated, exacerbated, accelerated or precipitated by his accepted employment injuries of right shoulder strain and acromioplasty surgery. However, this evidence is immaterial as none of the medical evidence submitted by appellant addresses whether there is a causal relationship between his claimed preexisting cervical condition and his accepted employment injuries. Although appellant also resubmitted evidence which did indicate that there was a relationship between his

¹ Appellant filed a request for reconsideration of the Office's December 8, 1995 decision in his May 1995 claim for recurrence of disability which is still pending.

² 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).

cervical and his right shoulder conditions, this evidence was previously reviewed by an Office hearing representative and therefore is repetitious or duplicative in nature. Consequently, appellant has not submitted sufficient evidence to warrant merit review by the Office of his claim.

The decision of the Office of Workers' Compensation Programs dated January 10, 1996 is hereby affirmed.

Dated, Washington, D.C.
January 20, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member