

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOANNE LIPPINCOTT and DEPARTMENT OF THE AIR FORCE,
MILITARY AIRLIFT COMMAND, Scott Air Force Base, Ill.

*Docket No. 97-2548; Submitted on the Record;
Issued June 22, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
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 37-year-old computer assistant, sustained an injury to her neck, shoulders, left arm and back on October 25, 1991 when an overhead closet fell on her head and shoulders. Appellant filed a Form CA-1 claim for benefits on November 4, 1991, which the Office accepted for right shoulder strain and cervical strain by letter dated December 5, 1991.

On May 15, 1992 appellant filed a Form CA-2 claim for recurrence of disability, alleging that on May 11, 1992 she began to experience pain in her neck, shoulders and back which was caused or aggravated by the October 25, 1991 employment injury. The Office accepted the claim by letter dated December 1, 1992, in which it indicated that appellant would be paid total disability compensation until March 6, 1993. The Office advised appellant that if she wished to claim additional compensation beyond that date, she would need to file for continuing compensation based on her employment injury, and submit additional, supporting medical evidence. Appellant was placed on the periodic rolls.

In order to determine whether appellant currently suffered residuals from her October 25, 1991 employment injury, the Office referred appellant for a second opinion examination with Dr. Robert E. Kuhlman, a Board-certified orthopedic surgeon. In a report dated March 2, 1993, Dr. Kuhlman advised that appellant had no objective findings indicating injury to the head, neck or upper and lower extremities, and that her complaints were unrelated to the October 1991 employment injury and had no orthopedic basis. He opined that appellant was able to do her work from an orthopedic standpoint and that she had no disability resulting from the work incident.

By letter dated July 11, 1994, the Office issued appellant a notice of proposed termination. The Office stated that the medical evidence of record indicated that employment-related disability had resolved as of March 1, 1993. Appellant was allowed 30 days to submit additional medical evidence or argument in opposition to the proposed termination.

By decision dated August 11, 1994, the Office terminated appellant's compensation.

By letter dated September 11, 1994, appellant's attorney requested an oral hearing, which was held on January 23, 1995. In support of his request, appellant's attorney submitted additional medical evidence. Included in this evidence was a September 28, 1993 report from Dr. Mark T. Viehmann, a Board-certified anesthesiologist, who stated that appellant had cervical disc disease after an accident at work where a cabinet fell on her head and neck, and noted that she would be unable to work for at least six weeks; an August 1, 1994 report from Dr. Brian A. O'Neill, a general practitioner, who stated that he had been treating appellant for chronic pain syndrome resulting from the October 25, 1991 work injury, and that she was disabled from any type of work; and a September 21, 1994 report from Dr. Robert E. Schultz, a Board-certified neurosurgeon, who rejected the Office's opinion that residuals from appellant's October 25, 1991 had resolved as of March 1, 1993. Dr. Schultz advised that appellant's employment-related symptoms had not resolved, that she was symptomatic from the original injury, for which she was currently undergoing treatment.

By decision dated March 13, 1995, the Office affirmed its previous decision. The Office, however, noted that subsequent to this decision appellant had submitted additional medical evidence in support of her claim that her current condition and/or disability was caused or aggravated by the October 25, 1991 injury. The Office hearing representative stated that the opinions of Drs. Viehmann, O'Neill and Schultz had created a conflict with the opinion of Dr. Kuhlman, and that therefore the case should be remanded to the district office for referral to an independent, third-party medical examiner to resolve the conflict in the medical evidence.

By letters dated April 17, 1995, the Office referred appellant for an independent medical examination with Dr. Panduranga R. Kini, Board-certified in psychiatry and neurology.

Dr. Kini examined appellant on May 8, 1995, and in a report dated May 19, 1995, stated findings on examination and reviewed appellant's medical history. He stated that appellant had generalized pain syndrome and subjective weakness of the arms and legs with normal neurological examination. Dr. Kini advised that appellant's condition initially could have stemmed from her October 25, 1991 work accident, and could have lasted up to six months due to myofascial or soft tissue injury. He stated, however, that persisting pain with normal examination cannot be attributed to the injuries of October 1991 and May 1992. Dr. Kini advised that appellant was not disabled at the present time since her neurological examination and diagnostic tests were all normal.

By decision dated July 21, 1995, the Office denied appellant's claim. The Office found based on Dr. Kini's referee medical opinion that the medical evidence of file failed to establish that her current condition or disability was causally related to her October 25, 1991 employment injury.

By letter dated November 3, 1995, appellant's attorney requested reconsideration.

By decision dated April 19, 1996, the Office affirmed its previous decision, finding that appellant failed to submit medical evidence sufficient to warrant modification.

By letter dated April 16, 1997, appellant's attorney requested reconsideration. In support of her claim, appellant submitted a September 11, 1996 report from Dr. William W. Sprich, a Board-certified neurosurgeon. In his report, Dr. Sprich stated:

“There has been a question as to the causal relationship of the symptoms and the accident, reported by Dr. Schultz. I am in complete agreement with Dr. Schultz's assessment since he was the primary treating physician and had seen [appellant] initially. I would defer to his assessment as to causation and mechanism. I have seen her in a follow-up capacity after him, therefore, there is no conflict between our opinions on the basis of the relationship of [appellant's] injury and the nature of her present neurologic difficulty.”

By decision dated April 30, 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 her claim under 5 U.S.C. § 8128(a).

The only decision before the Board on this appeal is the April 30, 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 April 30, 1997 decision is the only decision issued within one year of the date that appellant filed her appeal with the Board, July 30, 1997, 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

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).

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. Although appellant submitted Dr. Sprich's April 30, 1997 medical report with her request for reconsideration, this evidence merely consists of a one-sentence, summary declaration that appellant's current symptoms were causally related to her work injury. Thus, her request did not contain any relevant and pertinent medical evidence for the Office to review. This is important since the outstanding issue in the case -- whether appellant's current cervical condition and/or disability was caused or aggravated by her October 25, 1991 work injury -- was medical in nature. Additionally, the April 16, 1997 letter from appellant's attorney 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 her current condition and/or disability was causally related to her October 25, 1991 work 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 April 30, 1997 is hereby affirmed.

Dated, Washington, D.C.
June 22, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member