

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL E. LOHSTROH and DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS, Marion, Ill.

*Docket No. 97-2696; Submitted on the Record;
Issued June 3, 1999*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs, by its decisions dated May 19, 1997 and December 2, 1996, abused its discretion in refusing to reopen appellant's claim for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128.

The Office accepted that appellant sustained a subluxation of the right patella on May 6, 1993 when he was injured in a softball game. On November 29, 1995 appellant filed a notice of recurrence of disability alleging that on December 21, 1993 he sustained a recurrence of disability causally related to his May 6, 1993 employment injury.

By decision dated May 1, 1996, the Office denied appellant's claim for a recurrence of disability due to his May 6, 1993 employment injury. In the accompanying memorandum to the Director, incorporated by reference, the Office found that the medical evidence provided by Dr. James M. Davis, an attending Board-certified orthopedic surgeon, was insufficiently rationalized or supported by objective findings to establish that appellant's current knee condition was related to his May 6, 1993 work injury.

In a letter received by the Office on September 4, 1996 appellant requested reconsideration of his claim. By decision dated December 2, 1996, the Office declined to review its prior decision after finding that appellant had not specified any error of law or fact or submitted any additional evidence with his reconsideration request.

By letter dated March 14, 1997, appellant again requested reconsideration of his claim and submitted an additional medical report. By decision dated May 19, 1997, the Office found that the evidence submitted was cumulative in nature and insufficient to warrant review of its prior merit decision.

The only decisions over which the Board has jurisdiction are the December 2, 1996 and the May 19, 1997 decisions, which denied appellant's request for a review of the merits of the

case. Because more than one year has elapsed between the issuance of the Office's decision dated May 1, 1996 and August 26, 1997, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the decision dated May 1, 1996.¹

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by written request to the Office identifying the decision and the specific issue(s) within the decision, which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

“(i) Showing that the Office erroneously applied or interpreted a point of law, or

“(ii) Advancing a point of law or fact not previously considered by the Office, or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”²

Section 10.138(b)(2) provides that any application for review of the merits of the claim 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.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 also does not constitute a basis for reopening a case.⁵

Appellant initially submitted a letter received by the Office on September 4, 1996 which indicated his dissatisfaction with the Office's merit decision. As appellant did not submit new evidence, cite an error of law or advance a legal argument, the Office properly denied review of its prior decision.

In support of his second request for reconsideration, appellant submitted a report dated March 3, 1997, from Dr. Davis. Dr. Davis discussed appellant's history of a lateral dislocation of his right patella on May 5, 1993 and his subsequent recurrent dislocation in November 1995. He stated, “It is my impression that his current problems including those that he was evaluated for in November of 1995 were directly related to represent recurrence of the same diagnosis from May 1993.” The record contained a prior report from Dr. Davis dated April 25, 1996, in which he discussed the cause of appellant's condition and which was fully considered by the Office in its merit decision. As Dr. Davis' March 3, 1997 report did not provide any relevant information

¹ See 20 C.F.R. §§ 501.2(c), 501.3(d).

² 20 C.F.R. § 10.138(b)(1).

³ See 20 C.F.R. § 10.138(b)(2).

⁴ *Daniel Deparini*, 44 ECAB 657 (1993).

⁵ *Id.*

not contained in his previously submitted April 25, 1996 report, it is cumulative in nature and, therefore, insufficient to warrant a reopening of appellant's case for merit review.⁶

In the present case, appellant has not established that the Office abused its discretion in its December 2, 1996 and May 19, 1997 decisions, by denying his request for a review on the merits of its May 1, 1996 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, advanced a point of law or of fact not previously considered by the Office or submitted relevant and pertinent evidence not previously considered by the Office.⁷

The decisions of the Office of Workers' Compensation Programs dated May 19, 1997 and December 2, 1996 are hereby affirmed.

Dated, Washington, D.C.
June 3, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁶ See *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

⁷ The Board notes that appellant submitted evidence subsequent to the Office's May 19, 1997 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; see 20 C.F.R. § 501.2(c).