

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL E. BUCHANAN and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Houston, Tex.

*Docket No. 96-569; Submitted on the Record;
Issued March 1, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

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 34-year-old taxpayer services representative, filed a Form CA-1 claim for traumatic injury on March 25, 1992, alleging that she tripped on an oily floor and sustained injuries to her right ankle, leg and lower arm and hip on March 24, 1992. The Office accepted appellant's claim for sprains to the right ankle and knee, contusion to the right wrist, and lumbar and thoracic strain. Appellant filed several claims for continuing compensation based on her accepted conditions and received intermittent compensation from the Office.¹ Appellant has not returned to work since March 25, 1992.

Appellant submitted Forms CA-8 for continuing compensation covering the period from June 12 through August 3, 1994.

By letter decision dated September 30, 1994, the Office denied appellant's claim for compensation for lost wages and leave used for the period of June 12 through August 3, 1994. The Office stated that appellant failed to submit medical evidence supporting her claim that she was temporarily totally disabled on those dates.

By letter dated October 14, 1994, appellant requested reconsideration of the Office's previous decision.

On October 24, 1994 appellant filed a Form CA-2 claim for recurrence of disability, claiming total disability based on her employment-related back condition from June 13 through August 5, 1994.

¹ Appellant also suffered from obesity and diabetes; however, the Office has not accepted that these conditions were precipitated, aggravated or accelerated by the March 24, 1992 employment injury.

By decision dated November 1, 1994, 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.

By letter dated April 7, 1995 and received by the Office on April 24, 1995, appellant requested reconsideration of the Office's previous decision. Appellant submitted form reports, physical therapy reports and treatment notes from Dr. Dan Eidman, a Board-certified orthopedic surgeon, and her treating physician. None of these reports contained a medical opinion pertaining to periods for which appellant had requested disability.²

By decision dated June 19, 1995, 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 June 19, 1995 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 June 19, 1996 decision is the only decision issued within one year of the date that appellant filed her appeal with the Board,³ December 4, 1995, this is the only decision over which the Board has jurisdiction.⁴

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.⁵ 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.⁶ 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.⁷

² The medical report closest in time to the periods of disability claimed by appellant is from Dr. Donald H. Nowlin, a Board-certified orthopedic surgeon, and is dated January 3, 1994. The report indicated findings on examination regarding appellant's complaints of pain in her knees and in her right hip, and stated that her obesity contributed to her condition. However, this report has no bearing on appellant's claim for benefits from June 12 to August 3, 1994. The medical report from Dr. Eidman closest in time to the periods for which appellant is claiming disability compensation is dated December 7, 1993 and merely indicates that appellant is suffering pain in her knees aggravated by depression.

³ In her appeal letter to the Board, received by the Board on December 4, 1995, appellant stated that she wished to appeal only the Office's June 19, 1995 decision, although she had two other claims pending before the Office. This intention on the part of appellant -- to appeal just the one Office decision -- was reaffirmed in an August 7, 1997 letter from the Office to her United States Senator.

⁴ See 20 C.F.R. § 501.3(d)(2).

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

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ *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 several form reports, treatment notes, and physical therapy reports, her request did not contain any new and relevant medical evidence for the Office to review. This is important since the outstanding issue in the case -- whether appellant was totally disabled from June 12 through August 3, 1994 -- is medical in nature. All the medical evidence submitted by appellant was either previously of record and considered by the Office in reaching prior decisions, or it did not specifically address the cause of her shoulder condition. Additionally, appellant's November 25, 1995 letter 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 she was totally disabled during the period in question due to her March 24, 1992 work injury, appellant 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 June 19, 1995 is hereby affirmed.

Dated, Washington, D.C.
March 1, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member