

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PETER J. CANNELL and U.S. POSTAL SERVICE,
POST OFFICE, Portland, Maine

*Docket No. 97-356; Submitted on the Record;
Issued March 8, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration on the grounds that it was untimely filed and failed to demonstrate clear evidence of error.

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.¹ As appellant filed his request for appeal on October 25, 1996, the only decision before the Board is the September 12, 1996 nonmerit decision denying appellant's application for review. The Board has no jurisdiction to review the most recent merit decision of record, the March 30, 1992 decision of the Office.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly denied appellant's request for reconsideration as it was untimely filed and failed to present clear evidence of error.

By letter decision dated October 20, 1987, the Office accepted that appellant had sustained a recurrent right L4-5 herniated disc on April 24, 1985 while in the performance of duty.

On January 15, 1988 appellant filed a claim for wage loss from April 1, 1987 to January 15, 1988 based on his April 24, 1985 employment injury. On April 15, 1988 the Office, in a decision, denied appellant's claim for wage loss on the grounds that he had failed to submit evidence in support of his claim. From April 11, 1989 through March 11, 1994, appellant filed

¹ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

five requests for reconsideration, four of which were denied in merit decisions by the Office; the final merit decision being issued on March 30, 1992.²

On July 7, 1995 appellant filed an appeal with the Board.

On January 26, 1996 appellant, through counsel, requested the Board to dismiss his appeal without prejudice and refer the matter to the Office “for reconsideration based on ‘new’ medical evidence.”

On March 13, 1996 the Board dismissed appellant’s July 7, 1995 appeal.

In a letter dated March 29 1996 and received by the Office on April 1, 1996, appellant, through counsel, filed a request for reconsideration and submitted evidence in support of his request.

On September 12, 1996 the Office, in a nonmerit decision, denied appellant’s request for reconsideration on the grounds that his request was untimely filed and found that the evidence submitted presented no clear evidence of error on the part of the Office.

On October 25, 1996 appellant appealed the Office’s September 12, 1996 decision to the Board.

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).³ The Office will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.⁴ When an application for review is untimely, the Office undertakes a limited review to determine whether the application presents clear evidence that the Office’s final merit decision was in error.⁵

The Board finds that, since more than one year has elapsed from the date of issuance of the Office’s March 30, 1992 merit decision to the date that appellant’s request for reconsideration was filed, March 11, 1994, appellant’s request for reconsideration was untimely. The Board further finds that the evidence submitted by appellant in support of the request for reconsideration does not raise a substantial question as to the correctness of the Office’s March 30, 1992 merit decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant’s claim. In this regard, appellant submitted two medical reports dated July 21 and September 1, 1995, from Dr. Carl A. Brinkman, appellant’s treating physician and Board-certified in neurological surgery, who stated that he believed that appellant was no longer able to work as a result of his two injuries which occurred in April 1985 and early 1987. In the July 21, 1995 report, Dr. Brinkman stated that appellant’s medical history

² On March 30, 1995 the Office denied appellant’s March 11, 1994 request for reconsideration in a nonmerit decision.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.138(b)(2); *see also Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

⁵ *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

suggested a causal relationship to his current medical condition. The Board notes that Dr. Brinkman's opinion is duplicative of his October 26, 1990 report, which the Office had previously considered and thus is of no evidentiary value.⁶ Further, the Board notes that although Dr. Brinkman stated in his September 1, 1995 report that, it was his strong feeling that appellant's injuries were cumulative and thus sufficient to prevent him from gainful employment, this new evidence fails to demonstrate clear error of law in the Office's March 30, 1995 merit decision denying benefits.⁷

As appellant has not, by the submission of factual and medical evidence, raised a substantial question as to the correctness of the Office's March 30, 1992 decision, he has failed to establish clear evidence of error and the Office did not abuse its discretion in denying a merit review of his claim.

The decision of the Office of Workers' Compensation Programs dated September 12, 1996 is affirmed.⁸

Dated, Washington, D.C.

March 8, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

⁶ See *Eugene F. Butler*, 36 ECAB 393, 398 (1984) (finding that 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 See *Arlonia B. Taylor*, 44 ECAB 591 (1993).

⁸ The Board notes that the Office's September 12, 1996 nonmerit decision incorrectly referred to the date of the decision pursuant to appellant's request for reconsideration as March 30, 1992. The date of appellant's last merit decision was March 30, 1995. Further, the Board notes that the Office, in its September 12, 1996 decision, referred to appellant's request for reconsideration as dated January 26, 1996. The record reveals that appellant filed a motion to dismiss an appeal filed on this claim pending before the Board on January 26, 1996 as stated *supra*. The record further shows that appellant's request for reconsideration filed with the Office after the Board's dismissal was dated March 29, 1996.