

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MILTON R. McQUISTON and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, Tex.

*Docket No. 97-1514; Submitted on the Record;
Issued March 26, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ the Office's regulations provide that a claimant must (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.² To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.³ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁴

¹ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

² 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

³ 20 C.F.R. § 10.138(b)(2).

⁴ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

This case has previously been before the Board. In the most recent prior appeal, the Board issued a decision and order⁵ on December 12, 1995, in which it affirmed the January 26, March 2, April 14 and August 25, 1993 decisions, of the Office on the grounds that appellant did not meet his burden of proof to establish that he sustained a right hip injury in the performance of duty; that appellant had no more than a 62 percent impairment of his left lower extremity, for which he received a schedule award; that appellant did not meet his burden of proof to establish that he is entitled to compensation for loss of wage-earning capacity after November 18, 1988 due to his employment-related left hip condition; and that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.⁶ The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

In support of his reconsideration request, appellant submitted an April 2, 1996 report, in which Dr. Christopher D. Burda, a Board-certified internist, to whom the Office referred him, noted that appellant's work duties and his left hip surgery aggravated the preexisting osteoarthritis of his right hip. However, this report is similar to other reports which had already been submitted to the Office, including a March 24, 1993 report, of Dr. Burda. The Board has held that the submission of evidence, which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁷ Appellant also submitted an April 5, 1996 report, in which Dr. John F. Walker, an attending Board-certified orthopedic surgeon, indicated that appellant's work duties aggravated his left hip condition. However, these reports are similar to other reports which had already been submitted to the Office, including February 11, 1987, December 1, 1988 and October 2, 1989 reports of Dr. Walker. Moreover, these reports are of limited probative value due to their lack of medical rationale in support of their opinions on causal relationship either with respect to the claimed employment injury of appellant's right hip injury or the claimed disability after November 18, 1988 due to the accepted employment injury of his left hip.⁸ Therefore, they are not directly relevant to the main issues of the present case, which are essentially medical in nature. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁹

In support of his reconsideration request, appellant argued that the present case, did not require the submission of the type of rationalized medical evidence described by the Board in *Victor J. Woodhams*,¹⁰ that the Office failed in its duty to supplement the record with medical

⁵ Docket No. 94-466.

⁶ The Office had accepted that appellant sustained an employment-related permanent aggravation of degenerative arthritis of his left hip.

⁷ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

⁸ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

⁹ *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

¹⁰ 41 ECAB 345, 351-52 (1989)

evidence and that the Office's and Board's decisions ignored the "common sense of the situation." The Board finds appellant's contentions to be without merit as the primary issue of the present case relates to the sufficiency of the medical evidence he submitted. Appellant also argued that he was coerced into returning to work in 1988 and that Dr. Walker's signature on a February 24, 1988 job offer was forged.¹¹ However, this argument and evidence would not be relevant in that appellant worked until November 11, 1988, after returning to work on June 4, 1988 and the main issue in this regard would be whether appellant submitted sufficient medical evidence to show that his work stoppage was due to an employment-related condition.

In the present case, appellant has not established that the Office abused its discretion in its December 18, 1996 decision by denying his request for a review on the merits of its prior decisions under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, that he advanced a point of law or a fact not previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office.

The decision of the Office of Workers' Compensation Programs dated December 18, 1996 is affirmed.

Dated, Washington, D.C.
March 26, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹¹ Appellant submitted two documents, dated February 18 and December 24, 1992, regarding the authenticity of Dr. Walker's signature.