

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY A. LOCKE and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Kansas City, Mo.

*Docket No. 97-2024; Submitted on the Record;
Issued March 26, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
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 40-year-old typist, filed a Form CA-1 claim for traumatic injury on June 7, 1994, alleging that she slipped on a wet floor and injured her back and left foot on May 23, 1994, which aggravated a previous, nonwork-related condition.

In response to a September 22, 1994 Office letter requesting additional factual and medical evidence, appellant submitted an undated, handwritten letter which indicated that although she had returned to work on July 11, 1994, she was still having problems stemming from the May 23, 1994 work incident. Appellant indicated that she went back to work for approximately one week, but was unable to perform her employment duties as of July 18, 1994 and continuing.

Appellant was examined by Dr. L.F. Glaser, a Board-certified orthopedic surgeon, on July 22, 1994, who issued a report on the same date. Dr. Glaser stated that appellant complained of pains in her neck, thoracic area and lower back, and in both arms and both legs. Dr. Glaser opined that appellant had multiple complaints which were "far out of proportion" to her objective findings and advised that she could return to work without restrictions.

Appellant was examined by Dr. Gerald R. McNamara, a Board-certified orthopedic surgeon, and Dr. Glaser's associate, on August 31, 1994. On a report issued the same date, Dr. McNamara noted multiple complaints emanating from her cervical neck down to her lumbar spine, with some pain, and intermittent numbness and tingling radiating down to her legs. Dr. McNamara stated that appellant also complained of headaches, although he advised that "considerable" neck pain was her major complaint. Dr. McNamara stated that appellant had decreased range of motion of her cervical neck, although just moderately, and that she had

compression disc causing neck complaints and point tenderness throughout her trapezius muscle and cervical muscle areas.

Dr. McNamara felt that appellant would benefit from aggressive physical therapy, as she was not able to return to work in her present job description.

The Office accepted appellant's claim for aggravation of foot injury by letter dated December 13, 1994.

By letter dated December 15, 1994, the Office advised appellant that it had received medical evidence indicating she had returned to work on July 11, 1994 and then stopped working on July 18, 1994, which suggested a recurrence of her work-related condition and disability beginning July 18, 1994 to the present. The Office stated that although her claim had been accepted for aggravation of her left foot injury, she needed to submit additional medical evidence, including a comprehensive medical report, to support a claim that she had sustained a subsequent injury and/or disability causally related to the initial May 23, 1994 employment injury. The Office also requested that appellant submit a factual statement explaining the circumstances of her alleged recurrence.¹

By letter decision dated November 27, 1995, the Office denied appellant's claim, finding that appellant failed to submit medical evidence sufficient to establish that she sustained a recurrence of disability beginning July 18, 1994 causally related to her accepted, May 23, 1994 employment injury.

By letter dated November 27, 1996, appellant requested reconsideration of the Office's previous decision. In support of her claim, appellant resubmitted Dr. McNamara's August 31, 1994 medical report and letter referring her for physical therapy. Appellant, however, did not submit any new medical evidence with her request.

By decision dated February 27, 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 February 27, 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 February 27, 1997 decision is the only decision issued within one year of the date that appellant filed her

¹ Appellant did not file a Form CA-2 or explicitly indicate to the Office that she was claiming a recurrence of disability beginning July 18, 1994 that was causally related to her May 23, 1994 work injury. The Office, however, developed this case as a recurrence claim.

appeal with the Board, June 2, 1997, this is the only decision over which the Board has jurisdiction.²

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.³ 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.⁴ 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.⁵

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. McNamara's August 31, 1994 medical report, and letter with her request for reconsideration, this evidence had already been reviewed by the Office in its previous decision. Thus, 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 sustained a condition and/or disability beginning July 18, 1994 caused or aggravated by her May 23, 1994 work injury -- was medical in nature. All the medical evidence submitted by appellant was previously of record and considered by the Office in reaching prior decisions. Additionally, appellant's November 27, 1996 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 had sustained a condition and/or disability causally related to her May 23, 1994 work injury which rendered her unable to perform her employment duties beginning July 18, 1994, 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.

² See 20 C.F.R. § 501.3(d)(2).

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

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Howard A. Williams*, 45 ECAB 853 (1994).

The decision of the Office of Workers' Compensation Programs dated February 27, 1997 is hereby affirmed.

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

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member