

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH BRADLEY and DEPARTMENT OF THE NAVY,
MARE ISLAND NAVAL SHIPYARD, Vallejo, CA

*Docket No. 97-2868; Submitted on the Record;
Issued November 2, 1999*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

The case has been before the Board on prior appeals. In a decision dated July 9, 1993, the Board found that a conflict in the medical evidence existed on the issue of whether appellant had a left ulnar nerve condition causally related to his employment injuries.¹ The case was remanded to the Office for resolution of the conflict. In a decision dated February 14, 1997, the Board affirmed decisions of the Office dated May 13, 1994 and December 9, 1993, finding that appellant had not established an ulnar neuropathy or other left arm condition as employment related.² The Board found that the weight of the evidence was represented by Dr. William P. Isgreen, a Board-certified neurologist selected as an impartial medical specialist. The history of the case is contained in the Board's prior decisions and is incorporated herein by reference.

By letter dated April 22, 1997, appellant requested reconsideration of his claim. In a decision dated May 24, 1997, the Office determined that the evidence was insufficient to warrant reopening the claim for merit review.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.³ Since appellant filed his appeal on September 8, 1997, the only decision over which the Board has jurisdiction on this appeal is the May 24, 1997 decision denying his request for reconsideration.

¹ Docket No. 92-1488.

² Docket No. 94-2032.

³ 20 C.F.R. § 501.3(d).

The Board has reviewed the record and finds that the Office properly refused to reopen the case for merit review.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁴ the Office's regulations provides that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or interpreted a point of law, or (2) advancing a point of law or fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁵ Section 10.138(b)(2) states that any application for review that does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.⁶

In this case, the evidence submitted after the May 13, 1994 Office decision consists of reports of continuing treatment by the attending physician, Dr. R. Thomas Grotz, an orthopedic surgeon. As the Board indicated in its July 9, 1993 decision, Dr. Grotz had submitted reports providing a reasoned opinion that appellant had an ulnar nerve condition requiring surgery that was employment related. The opinion of Dr. Grotz created a conflict with a second opinion physician and resulted in the referral to an impartial medical specialist, Dr. Isgreen.

The continuing reports of Dr. Grotz reiterate his opinion that appellant's ulnar nerve condition was employment related, without providing any new and relevant information. For example, Dr. Grotz stated in an April 9, 1997 report that he continued to seek authorization for a progressive ulnar neuropathy surgery, without providing any new and relevant evidence on the issue of causal relationship with employment. The Board finds that the evidence does not meet the requirements of section 10.138(b)(1)(iii), nor has appellant met any of the requirements of section 10.138(b)(1). Accordingly, the Office properly denied his request for reconsideration without reopening the case for merit review.

⁴ 5 U.S.C. § 8128(a) (providing that "[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 20 C.F.R. § 10.138(b)(1).

⁶ 20 C.F.R. § 10.138(b)(2); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

The decision of the Office of Workers' Compensation Programs dated May 24, 1997 is affirmed.

Dated, Washington, D.C.
November 2, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member