

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DELORES BROOKS and DEPARTMENT OF THE ARMY,
AVIATION SYSTEMS COMMAND, St. Louis, MO

*Docket No. 98-1253; Submitted on the Record;
Issued November 12, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT:

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for a merit review of her claim under 20 C.F.R. § 10.138.

On January 3, 1991 appellant, then a 37-year-old procurement clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she suffered from carpal tunnel syndrome as a result of her employment. Appellant indicated that she first became aware of her condition in July 1990. On July 10, 1991 the Office accepted appellant's claim for bilateral carpal tunnel syndrome and bilateral carpal tunnel surgery.¹ Appellant received appropriate wage-loss compensation as well as a schedule award for an 18 percent permanent impairment of both her right and left upper extremities. She resigned from her position with the employing establishment effective August 16, 1991.

In a September 28, 1994 notice of recurrence of disability (Form CA-2a), appellant alleged that she sustained a recurrence of disability on March 1, 1994, causally related to her July 1, 1990 employment injury. In describing the circumstances of her recurrence of disability, appellant explained that she began to experience pain in her arms similar to her original pain and that she returned to her treating physician, Dr. Eades, in May 1994 for a knot that developed in her right forearm. In a report dated October 29, 1994,² he diagnosed a lipoma of the right forearm and recommended surgery, which he performed on November 1, 1994. However, Dr. Eades did not indicate the specific cause of appellant's current condition.

By decision dated December 1, 1994, the Office denied appellant's claim on the basis that the evidence failed to demonstrate that the claimed recurrence of disability on March 1, 1994, was causally related to the previously accepted employment injury of July 1, 1990. In an

¹ Appellant underwent surgery on January 30 and February 26, 1991. Both procedures were performed by Dr. Joseph W. Eades, a Board-certified plastic surgeon.

² This report was submitted in response to the Office's October 14, 1994 request for additional factual and medical information.

accompanying memorandum, the Office noted, among other things, Dr. Eades' October 29, 1994 report and concluded that the evidence of record did not include a rationalized medical opinion establishing a causal relationship between the prior work exposure and appellant's current condition.

Appellant subsequently filed four requests for reconsideration all of which were denied by the Office based on appellant's failure to establish a causal relationship between her March 1, 1993³ recurrence of disability and her previously accepted employment injury of July 1, 1990. The Office issued its most recent merit decision on December 13, 1996. In denying modification, the Office explained that Dr. Eades' most recent opinion was speculative as to the cause of appellant's current condition.⁴ The Office further noted the absence of medical documentation of bridging symptoms between the time appellant retired in August 1991 and her first reported complaints of increased numbness in January 1993. Consequently, the Office concluded that the record lacked a rationalized medical opinion establishing a causal relationship.

On March 24, 1997 appellant filed another request for reconsideration. In support of her request, appellant submitted a November 1, 1994 operative report regarding the removal of a lipoma from her right forearm. Appellant also submitted a January 28, 1997 report from Dr. Eades in which he indicated that appellant "most likely has a recurring bilateral carpal tunnel syndrome." The Office denied modification on July 9, 1997 without reaching the merits of appellant's claim.

Appellant filed another request for reconsideration on July 25, 1997. Accompanying her request were nerve conduction studies dated April 11, 1996 and October 30, 1995 and a November 13, 1995 report from Dr. James S. Bonner, a Board-certified psychiatrist and neurologist. On August 21, 1997 the Office again denied modification without reaching the merits of appellant's claim. Appellant subsequently filed an appeal with the Board on March 2, 1998.⁵

³ Appellant subsequently amended her September 28, 1994 Form CA-2a to reflect March 1, 1993 as the date of recurrence of disability.

⁴ In a report dated November 16, 1995, Dr. Eades explained that appellant did well following her 1991 surgeries until January 1993, when she noticed some increased numbness. He further noted that he last saw appellant on October 23, 1995 and that she had residual problems from her work-related carpal tunnel syndrome. Dr. Eades also noted that appellant had additional symptoms of "pain in her neck" which did not completely fit with her diagnosis of carpal tunnel syndrome. As such, he referred appellant for a neurological evaluation. In an addendum to his report, Dr. Eades noted that appellant was examined by a neurologist in March 1996, who recommended an additional surgical evaluation should appellant's symptoms continue. He also noted the results of an April 11, 1996 nerve conduction study, which was interpreted as possibly reflecting "a residual or recurrent bilateral carpal tunnel syndrome." Dr. Eades stated that "it would appear that [appellant] has residual problems from her original carpal tunnel syndrome, which is not infrequently seen in cases [where] there has been severe pressure on the nerve." He further explained that "[s]ome cases never fully recover and the only way to determine whether this is persistence from her original surgery or scar tissue producing similar symptoms is to perform surgery."

⁵ Appellant submitted additional medical evidence subsequent to the Office's August 21, 1997 decision denying modification. Inasmuch as the Board's review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).

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.⁶ As appellant filed her appeal with the Board on March 2, 1998, the Board lacks jurisdiction to review the Office's most recent merit decision dated December 13, 1996. Consequently, the only decisions properly before the Board are the Office's July 9 and August 21, 1997 decisions denying appellant's requests for reconsideration.

The Board finds that the Office properly exercised its discretion in refusing to reopen appellant's case for a merit review under 20 C.F.R. §10.138.

Section 10.138(b)(1) of Title 20 of the Code of Federal 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 a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁷ 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 the three requirements enumerated under Section 10.138(b)(1), the Office will deny the application for review without reaching the merits of the claim.⁸

Appellant's March 24 and July 25, 1997 requests for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a point of law. Additionally, appellant did not advance a point of law or a fact not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above noted requirements under section 10.138(b)(1). With respect to the third requirement, submitting relevant and pertinent evidence not previously considered, the Office correctly noted that the October 30, 1995 nerve conduction study and Dr. Bonner's November 13, 1995 report were already part of the record.⁹ Additionally, although the April 11, 1996 nerve conduction study was not a part of the record, the study's results were quoted by Dr. Eades in the addendum to his November 16, 1995 report and specifically referenced by the Office in its December 13, 1996 merit decision. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening the case.¹⁰

With respect to the November 1, 1994 operative report regarding the removal of a lipoma from appellant's right forearm, although this report was not previously of record, it does not

⁶ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

⁷ 20 C.F.R. § 10.138(b)(1).

⁸ 20 C.F.R. § 10.138(b)(2).

⁹ This evidence was initially submitted in conjunction with appellant's March 6, 1996 request for reconsideration, which the Office denied on April 23, 1996.

¹⁰ *Sandra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

address the issue of causal relationship. As such, this evidence is not relevant to the issue on reconsideration.¹¹ Finally, Dr. Eades' January 28, 1997 report, in which he stated that appellant "most likely has a recurring bilateral carpal tunnel syndrome," is merely a reiteration of his earlier opinion and, once again, Dr. Eades failed to offer any rationalized basis for his conclusion. Consequently, the repetitive nature of this evidence renders it insufficient to warrant reopening of appellant's claim.¹² Inasmuch as the newly submitted evidence on reconsideration is both repetitious and irrelevant, appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.138(b)(1).

As appellant is not entitled to a review of the merits of her claim based on any of the above noted requirements under section 10.138(b)(1), the Board finds that the Office did not abuse its discretion in denying appellant's March 24 and July 25, 1997 requests for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated August 21 and July 9, 1997 are, hereby, affirmed.

Dated, Washington, D.C.
November 12, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹¹ Evidence that does not address the particular issue involved does not constitute a basis for reopening the claim. *Richard L. Ballard*, 44 ECAB 146, 150 (1992).

¹² Evidence which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening the claim. *James A. England*, 47 ECAB 115, 119 (1995).