

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN W. KNOTT and DEPARTMENT OF THE NAVY, NAVAL AIR
WARFARE CENTER, AIRCRAFT DIVISION, Patuxent River, MD

*Docket No. 97-2800; Submitted on the Record;
Issued October 21, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

On December 6, 1994 appellant, then a 44-year-old mechanic, sustained a lumbar strain and neuritis of the left leg in the performance of duty. He resigned his position on February 17, 1995 through a voluntary separation incentive pay program.

By decision dated August 19, 1995, the Office advised appellant that it had determined that he had no loss of wage-earning capacity following his reemployment as a powered system mechanic worker.

By letter dated August 31, 1995, appellant requested an oral hearing before an Office hearing representative. On April 1, 1996 a hearing was held before an Office hearing representative at which time appellant testified.

By decision dated July 10, 1996, the Office hearing representative affirmed the Office's August 19, 1995 decision. The hearing representative found that the medical evidence did not support appellant's claim of a recurrence of total disability on February 17, 1995 causally related to his December 6, 1994 employment injury. He found that appellant was able to perform his light-duty work until the date of his voluntary retirement.

By letter dated March 6, 1997, appellant requested reconsideration and submitted evidence previously submitted and considered by the Office as well as a September 17, 1996 report from Dr. Daniel J. Bauk, an orthopedic surgeon, in which he stated that he did not examine appellant until March 1995 and therefore he could not state whether appellant should have been returned to light-duty status after his initial injury in December 1994.

By decision dated June 16, 1997, the Office denied appellant's request for reconsideration on the grounds that the medical evidence submitted by appellant in support of his

request for reconsideration did not address the issue of whether appellant's claimed recurrence of total disability on February 17, 1995 was causally related to his December 6, 1994 employment injury.

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

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 appeal with the Board on August 29, 1997, the only decision properly before the Board is the Office's June 16, 1997 decision denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's July 10, 1996 or August 19, 1995 decisions denying appellant's claim for a recurrence of disability.²

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or a fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. 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 requirements, the Office will deny the application for review without reviewing the merits of the claim.

In this case, appellant alleged that he sustained a recurrence of total disability on February 17, 1995, the date of his retirement. He alleged that he was forced to retire because residuals of his December 6, 1994 employment injury prevented him from performing his light-duty position. By decisions dated August 19, 1995 and July 10, 1996, the Office found that the medical evidence did not establish that appellant sustained a recurrence of total disability causally related to his 1994 employment injury.

In support of his March 6, 1997 request for reconsideration, appellant submitted a September 17, 1996 report from Dr. Bauk, an orthopedic surgeon. In this report, Dr. Bauk stated that he did not examine appellant until March 1995 and could not state whether he should have been returned to light-duty status following his employment injury. This report does not constitute pertinent and relevant evidence not previously considered by the Office as the issue upon which appellant's claim was denied was whether appellant was totally disabled in February 1995 as a result of his 1994 employment injury and Dr. Bauk did not address this issue in his report.

As appellant did not submit pertinent and relevant evidence not previously considered by the Office, did not show that the Office erroneously applied or interpreted a point of law and did not advance a point of law or a fact not previously considered by the Office, the Office did not abuse its discretion in denying appellant's request for reconsideration.

¹ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

² *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

The June 16, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
October 21, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member