

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of IRMA McCLELLAN and U.S. POSTAL SERVICE,
POST OFFICE, Yorkville, NY

*Docket No. 98-648; Submitted on the Record;
Issued October 8, 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 the merits under 5 U.S.C. § 8128.

On April 7, 1993 appellant, then a 41-year-old window clerk, filed a notice of traumatic injury and claim for compensation, alleging that she pulled a muscle in her back at work on April 5, 1993 while moving a tub of mail. The Office accepted that claim for low back strain and authorized physical therapy. Appellant returned to work in light-duty position and was paid for intermittent periods of wage loss.¹

On June 12, 1995 appellant filed a claim alleging that she sustained a recurrence of disability on June 7, 1995. She noted on her CA-2a form that her lower back started bothering her on Sunday, June 5, 1995, with increasing pain over the next couple of days until it became unbearable while she was at work. Appellant was off work from June 7 to June 12, 1995.

In a July 26, 1995 report, Dr. Aziz Eshraghi, appellant's treating physician and a Board-certified orthopedic surgeon, noted that he had been treating appellant since December 1994 and that appellant had a history of low back pain with radiating pain to her left lower leg, for which she was prescribed medication and physical therapy. Dr. Eshraghi also noted that a magnetic resonance imaging (MRI) confirmed a herniated disc. He diagnosed back derangement with small herniated disc and left sciatica and advised that appellant should only work light duty.

In a decision dated September 23, 1995, the Office denied appellant's claim for recurrence of disability beginning June 7, 1995.

¹ Appellant filed claims for recurrences of disability sustained on April 12 and September 9, 1994, and May 5, 1995 which were approved by the Office.

On October 18, 1995 appellant requested a review of the written record.

Along with her request, appellant submitted a copy of Dr. Eshraghi's July 26, 1995 report. On the bottom of the report, the doctor prepared a handwritten addendum noting that appellant was off work from June 7 to June 11, 1995 for bed rest because of acute low back pain "related to the original injury" on April 4, 1993.

In a decision dated April 4, 1996, an Office hearing representative affirmed the Office's September 23, 1996 decision. The Office hearing representative specifically found Dr. Eshraghi's opinion to be insufficient to establish appellant's burden of proof as the doctor provided no rationale for his conclusion that appellant's recurrence of disability on June 7, 1995 was causally related to the April 5, 1993 work injury. Thus, appellant was denied compensation.

By letter dated May 29, 1996, appellant requested reconsideration.

In conjunction with her reconsideration request, appellant submitted a report from Dr. Eshraghi dated April 24, 1996. Dr. Eshraghi noted that he had been treating appellant "since December 5, 1994 for an accident which occurred on April 5, 1993 where she sustained injury to her lower back area and left lower limb." He indicated that an MRI reported a herniated disc for which appellant received physical therapy. Dr. Eshraghi noted that appellant's condition was improved until June 7, 1995 when she had acute recurrent pain in her lower lumbar spine radiating to her left lower limb, which required bed rest from June 7 to June 11, 1995. He concluded that appellant's June 7, 1995 back pain was related to the back injury of April 5, 1993.

In a decision dated July 26, 1996, the Office denied modification following a merit review of the record.

In a July 14, 1997 letter, appellant requested reconsideration.

Appellant submitted an April 7, 1997 report from Dr. Eshraghi in which the doctor stated that he wanted to clarify errors contained in his April 24, 1996 report. He noted that appellant had been treated since December 5, 1994 for an injury she sustained to her back on April 5, 1993 while moving a tub of mail at work. Dr. Eshraghi stated that an MRI revealed a bulging disc, not a herniated disc, as previously reported. He repeated his earlier findings that appellant's back condition had somewhat improved until June 7, 1995 when she had recurrent pain radiating to her lower limb. According to Dr. Eshraghi, his physical examination on June 7, 1995 revealed the presence of muscle spasm associated with stiffness and limitation of range of motion of the lumbar spine. He opined that appellant's recurrent back pain was directly related to her prior April 5, 1993 work injury and that she was totally disabled from June 7 to June 11, 1995 as a result of that condition.

In an October 20, 1997 decision, the Office denied appellant's request for reconsideration on the grounds that her evidence was insufficient to warrant a merit review.

The Board finds that the Office properly exercised its discretion in denying appellant's request for reconsideration on the merits.

Section 8128(a) of the Federal Employee's Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.² The Office, through its regulations, has imposed a one-year time limitation for a request of review to be made following a merit decision of the Office.³ The regulations provide 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.⁴ When 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.⁵ 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.⁶ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁷ Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.⁸

In the instant case, appellant submitted in support of her reconsideration request an April 7, 1997 report from Dr. Eshraghi, her treating physician. The Office correctly noted that the April 7, 1997 report is duplicative and repetitious of Dr. Eshraghi's prior reports which causally related, without supporting rationale, appellant's recurrent back pain on June 7, 1995 to her April 5, 1993 employment injury. The only new aspects of Dr. Eshraghi's April 7, 1997 report are that he clarified appellant's history of injury and he clarified that appellant's MRI scan reported a bulging disc and not a herniated disc. On the relevant issue of causal relationship, however, the doctor's opinion is still without medical rationale. Because Dr. Eshraghi's April 7, 1997 report is merely a restatement of evidence previously considered by the Office, it is deemed duplicative and repetitious and fails to provide a basis for a merit review.⁹

As appellant's July 14, 1997 request for reconsideration does not meet at least one of the requirements set forth for obtaining a merit review of her claim, the Board finds that the Office did not abuse its discretion in denying that request.

The decision of the Office of Workers' Compensation Programs dated October 20, 1997 is hereby affirmed.

² 5 U.S.C. § 8128; *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

³ 20 C.F.R. § 10.138(b)(2).

⁴ 20 C.F.R. § 10.138(b)(1).

⁵ *Id.* § 10.138(b)(2).

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁷ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁸ *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

⁹ *Diekemper*, *supra* note 3.

Dated, Washington, D.C.
October 8, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member