

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MEDA J. DOTY and DEPARTMENT OF THE INTERIOR,
FISH & WILDLIFE SERVICE, Fort Collins, CO

*Docket No. 98-932; Submitted on the Record;
Issued October 28, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs' denial of appellant's request for reconsideration pursuant to section 8128 of the Federal Employees' Compensation Act constituted an abuse of discretion.

On October 9, 1991 appellant, then a 56-year-old computer program analyst, filed a notice of traumatic injury and claim, alleging that she injured her lower back on the right side and right foot while lifting boxes of copy paper. On November 25, 1991 the Office accepted appellant's claim for low back strain and continuation of pay was approved. Appellant returned to work on a part-time basis on April 9, 1992. On May 11, 1992 appellant returned to work full time. On August 7, 1992 the Office accepted appellant's claim for the additional condition of herniated nucleus pulposus at the L4 to L5 level.

On August 24, 1993 appellant filed a claim for recurrence of disability beginning March 6, 1993. Appellant stopped work on May 10, 1993. She indicated that when she began working without restrictions, she had additional pain and asked for her restrictions to be reinstated in February 1993. However, she was injured in a car accident on March 6, 1993 before her doctor's report related to these restrictions could be implemented. By decision dated December 29, 1993, the Office accepted appellant's claim for recurrence of disability for her previously accepted injuries but not for the cervical condition she sustained in the car accident. On January 31, 1994, appellant filed a claim for continuing compensation for the period May 10, 1993 to January 31, 1994. In a decision dated January 23, 1996, the Office found appellant did not establish that she sustained temporary total disability for the period May 10, 1993 to January 31, 1994 and terminated medical benefits. By decision dated October 18, 1996, an Office hearing representative affirmed the January 23, 1996 decision of the Office on the grounds that the medical evidence did not establish that appellant was temporarily totally disabled due to her accepted employment injuries. However, the Office hearing representative also modified that portion of the Office's January 1996 decision, finding that appellant was not entitled to continuing medical benefits on the grounds that there was no evidence which

established that appellant did not have any residuals of her accepted October 1991 injuries. In a decision dated October 8, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant merit review.

The Board has duly reviewed the entire case record on appeal and finds that the Office properly denied appellant's request for reconsideration.¹

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, advancing a point of law or fact not previously considered by the Office, or 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.² 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.³ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁴

On reconsideration, appellant submitted a variety of documents she believed supported her contention that she was entitled to wage loss compensation for the period May 10, 1993 to January 31, 1994. However, the majority of the evidence submitted by appellant either predates or postdates the claimed period of wage loss from May 10, 1993 to January 31, 1994. Therefore, it is irrelevant to the central issue in this case and does not constitute a basis for reopening the record. The evidence relevant to the claimed period of wage-loss compensation includes office notes dated January 13 and 20, 1994, a narrative medical report dated November 30, 1993 and a release for work dated January 13, 1994 by Dr. Kenneth A. Pettine, an orthopedist and appellant's treating physician. The November 1993 report by Dr. Pettine was previously reviewed and considered by the Office and therefore is repetitive. The office notes and work release form are cumulative in nature. Consequently, this evidence is not sufficient to warrant reopening the record for merit review. The Office properly denied appellant's request for reconsideration.⁵

¹ 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. As appellant filed her appeal with the Board on January 28, 1998, the only decision before the Board is the Office's October 8, 1997 decision. See 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 20 C.F.R. § 10.138(b)(2).

³ *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

⁴ *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁵ The Board notes that on appeal, appellant argues that the evidence of record establishes entitlement to wage-loss compensation for temporary total disability related to her accepted employment injuries after January 1994. However, the record does not contain any claim for wage-loss compensation after January 31, 1994 nor any decision on such a claim. Therefore, this issue is not before the Board.

The decision of the Office of Workers' Compensation Programs dated October 8, 1997 is hereby affirmed.

Dated, Washington, D.C.
October 28, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member