

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELADIO T. FIGUEROA and DEPARTMENT OF THE NAVY,
U.S. NAVAL STATION, GU

*Docket No. 98-595; Submitted on the Record;
Issued September 7, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

On November 18, 1993 appellant, then a 45-year-old hazardous waste handler work leader, filed a notice of occupational disease claiming that his duties as a hazardous waste handler work leader had caused him multiple physical¹ and emotional conditions. Appellant alleged he first became aware that the conditions were employment related on October 18, 1993.

By decision dated August 31, 1994, the Office denied appellant's claim, finding that the medical evidence he submitted in support of his claim was not sufficient to establish that his current condition or disability was caused or aggravated by employment factors.

By letter dated September 29, 1994, appellant's representative requested an oral hearing.

By decision dated April 25, 1996, an Office hearing representative affirmed the Office's previous decision, finding that the medical evidence submitted by appellant was insufficient to establish that his current condition or disability was caused or aggravated by employment factors. The hearing representative also determined that appellant failed to submit a rationalized, probative medical opinion establishing that appellant's claimed condition or disability was caused by employment factors.

In a letter dated April 2, 1997, appellant requested reconsideration of the hearing representative's decision. He submitted a two-page statement dated April 2, 1997, a July 26,

¹ Appellant alleged the he sustained damage to his immune system, nervous system and muscle joints as well as headaches, loss of concentration and memory and fatigue.

1996 letter from Dr. Jordan S. Popper,² his response to the Office's questions number 1a to 5 and 13, information, an April 22, 1993 letter from Dr. William W. Weare,³ a copy of union grievances dated April 2, 1992 and April 16, 1993.

By decision dated November 13, 1997, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

The only decision before the Board on this appeal is the November 13, 1997 Office decision which found that the evidence submitted in support of appellant's request for reconsideration was insufficient to warrant review of its prior decision. Since the November 13, 1997 decision is the only decision issued within one year of the date that appellant filed his appeal with the Board, December 9, 1997, this is the only decision over which the Board has jurisdiction.⁴

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law; by advancing a point of law or fact not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.⁵ 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 three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁶ 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.⁷

In the present case, appellant has not shown that the Office erroneously applied or interpreted a point of law or fact not previously considered by the Office. Neither has he submitted relevant and pertinent evidence not previously considered by the Office. The only new medical evidence appellant submitted was the July 26, 1996 report from Dr. Popper. This evidence, however, is neither relevant nor pertinent because the report fails to contain a rationalized opinion which specifically addresses the cause of appellant's claimed condition. Additionally, the Office had previously considered a September 1, 1993 report by Dr. Popper and found it to be speculative. Appellant also did not show that the Office erroneously applied or interpreted a point of law; nor advanced a point of law not previously considered by the

² A Board-certified neurologist.

³ A Board-certified family practitioner.

⁴ See 20 C.F.R. § 501.3(d)(2).

⁵ 20 C.F.R. § 10.138(b)(1); see generally 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ *Howard A. Williams*, 45 ECAB 853 (1994).

Office. Although appellant contended that his medical condition was caused or aggravated by employment factors, the issue in this case is medical in nature and must be addressed by a physician. Appellant failed to submit medical evidence in support of this contention. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

The decision of the Office of Workers' Compensation Programs dated November 13, 1997 is hereby affirmed.

Dated, Washington, D.C.
September 7, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member