

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANN B. SELIN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS AFFAIRS WEST SIDE MEDICAL CENTER, Chicago, IL

*Docket No. 98-846; Submitted on the Record;
Issued September 13, 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 properly denied appellant's request for reconsideration of her claim under 5 U.S.C. § 8128.

On November 16, 1992 appellant, then a 42-year-old speech pathologist, filed a claim for a traumatic injury occurring on November 10, 1992 in the performance of duty. The Office accepted appellant's claim for chondromalacia of the left knee and lumbar strain. Appellant did not stop work.

On April 20, 1995 appellant filed a notice of recurrence of disability on March 2, 1993 causally related to her November 10, 1992 employment injury. She did not stop work following her alleged recurrence of disability.

In a decision dated January 25, 1996, the Office denied appellant's claim on the grounds that the evidence failed to establish that she sustained a recurrence of disability causally related to her employment injury. In a letter received by the Office on November 27, 1996, appellant requested reconsideration of her claim. By decision dated February 24, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and thus insufficient to warrant review of its prior decision.

The Board has duly reviewed the case record and finds that the Office did not abuse its discretion in refusing to reopen appellant's case for further review of the merits of her claim under section 8128.

The only decision over which the Board has jurisdiction is the Office's February 24, 1997 decision denying appellant's request for a review of the merits of the case. Because more than one year has elapsed between the issuance of the Office's decision dated January 25, 1996

and January 5, 1998, the date appellant filed her appeal before the Board, the Board lacks jurisdiction to review the decision dated January 25, 1996.¹

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and the specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

“(i) Showing that the Office erroneously applied or interpreted a point of law, or

“(ii) Advancing a point of law or fact not previously considered by the Office, or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”²

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.³ Evidence that repeats or duplicates evidence already in the case record has no evidentiary values and does not constitute a basis for reopening a case.⁴ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁵

In the present case, the Office denied appellant's claim on the grounds that the medical evidence did not establish that she sustained a recurrence of disability on or after March 1, 1993 causally related to her November 10, 1992 employment injury. In support of her request for reconsideration, appellant submitted a statement dated August 30, 1996 from Dr. James A. Hill, a Board-certified orthopedic surgeon and her attending physician. He indicated that he was submitting copies of office visit notes from April 15, 1993 through March 7, 1994 and stated, “These are sent at [appellant's] request to establish the relationship between her injury of November 2, 1992 and the recurrence of March 2, 1993.” In his August 30, 1996 letter, Dr. Hill did not specifically address the issue of whether appellant had sustained an employment-related recurrence of disability. Instead Dr. Hill submitted office visit notes from April 1993 to March 1994. The office visit notes dated April 28 and November 3, 1993 and March 17, 1994 duplicated evidence already contained in the case record and therefore did not constitute a basis for reopening appellant's case for merit review under 20 C.F.R. § 10.138.⁶ In a newly submitted

¹ See 20 C.F.R. §§ 501.2(c), 501.3(d).

² 20 C.F.R. § 10.138(b)(1).

³ See 20 C.F.R. § 10.138(b)(2).

⁴ *Daniel Deparini*, 44 ECAB 657 (1993).

⁵ *Id.*

⁶ *Richard L. Ballard*, 44 ECAB 146 (1992).

office visit note dated September 2, 1993, Dr. Hill discussed his treatment of appellant for back and knee pain and diagnosed degenerative lumbar disc disease and bilateral chondromalacia. He, however, did not address the pertinent issue of the cause of appellant's condition and thus his report is irrelevant and insufficient to warrant a reopening of the claim.

Appellant further submitted a report from a podiatrist dated November 30, 1995, in which he indicated that appellant required orthosis therapy; however, as the podiatrist did not indicate an opinion on causation or address appellant's alleged recurrence of disability, his report lacks probative value.

As abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.⁷ Appellant has made no such showing here and thus the Board finds that the Office properly denied her application for reconsideration of her claim.

The decisions of the Office of Workers' Compensation Programs dated February 24, 1997 is hereby affirmed.

Dated, Washington, D.C.
September 13, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

⁷ *Rebel L. Cantrell*, 44 ECAB 660 (1993).