

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGUERITE BROWN and DEPARTMENT OF THE AIR FORCE,
MILITARY AIRLIFT COMMAND, CHARLESTON AIR FORCE BASE,
Charleston, SC

*Docket No. 98-1829; Oral Argument Held May 5, 1999;
Issued September 9, 1999*

Appearances: *Marguerite Brown, pro se; Sheldon G. Turley, Jr., Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on May 22 and October 9, 1997; and (2) whether the Office properly refused to reopen appellant's claim on the grounds that her requests were not timely filed and did not present clear evidence of error on January 8 and February 27, 1998.

The Board has duly reviewed the case on appeal and finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits on May 22 and October 9, 1997.

Appellant filed a claim alleging that on November 5, 1993 she injured her back in the performance of duty. The Office accepted appellant's claim for lumbosacral strain and cervical strain on February 9, 1994. Appellant returned to limited duty on January 6, 1994. The Office denied appellant's claim for disability from April 18 through June 30, 1994 on September 21, 1994. Appellant requested a review of the written record on October 13, 1994 and by decision dated February 13, 1995, the hearing representative affirmed the Office's September 21, 1994 decision. Appellant requested reconsideration on March 22, 1995 and by decision dated June 26, 1995, the Office denied modification of its prior decision. Appellant requested reconsideration on March 31, 1996 and the Office again denied modification of the February 13, 1995 decision on September 24, 1996. Appellant requested reconsideration on April 25 and September 21, 1997 and the Office denied these requests on May 22 and October 9, 1997, respectively, finding that appellant had not submitted relevant new evidence. Appellant requested reconsideration on October 14, 1997 and January 24, 1998 and the Office denied these

requests on January 8 and February 27, 1998, respectively, finding that appellant's requests for reconsideration were not timely filed and did not establish error on the part of the Office.

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 Inasmuch as appellant filed her appeal with the Board on May 20, 1998, the only decisions properly before the Board are the Office's May 22 and October 9, 1997 decisions and the January 8 and February 27, 1998 decisions, denying appellant's requests for reconsideration.

Section 10.138(b)(1) of the Code of Federal Regulations provides 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.² 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.³

In support of her April 25, 1997 request for reconsideration, appellant submitted a copy of a deposition from Dr. Rene Ravenel, a Board-certified orthopedic surgeon, dated April 23, 1996. In his deposition, Dr. Ravenel stated that he believed that appellant's employment injury aggravated her preexisting degenerative arthritis and that it most probably caused and resulted in back and leg conditions. He concluded that appellant could not work 40 hours a week. Although the Office had not previously considered Dr. Ravenel's deposition, the opinions contained therein were expressed in his March 26, 1996 report reviewed prior to the September 24, 1996 merit decision. In the March 26, 1996 report, Dr. Ravenel stated that appellant's employment injury aggravated her preexisting degenerative arthritis and most probably caused the resultant back and leg complaints. As the Office had previously considered the medical opinion evidence expressed in the deposition, it is repetitive of evidence already contained in the record and is not sufficient to require the Office to reopen appellant's claim for consideration of the merits.

Appellant also resubmitted Dr. Ravenel's March 26, 1996 report, a report dated March 14, 1995 from Dr. J. Ray Ivester, Sr., a Board-certified anesthesiologist, and a February 27, 1995 report from Dr. Gregory M. Jones, a physician, Board-certified in physical medicine and rehabilitation. These medical reports had previously been reviewed by the Office in reaching final decisions. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.⁴ Therefore, these reports were not sufficient to require the Office to reopen appellant's claim for review of the merits on May 22, 1997.

¹ 20 C.F.R. § 501.3(d)(2).

² 20 C.F.R. § 10.138(b)(1).

³ 20 C.F.R. § 10.138(b)(2).

⁴ See *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983);

In support of her September 21, 1997 reconsideration request, appellant stated that she was resubmitting medical evidence. She resubmitted a series of notes from Dr. Jones dated December 1993 through April 1994 which were previously considered by the Office in reaching a final decision. As noted above, as this material was repetitious it has no evidentiary value and does not constitute a basis for reopening a case.⁵

The Board further finds that the Office properly refused to reopen appellant's claim on the grounds that her requests were not timely filed and did not present clear evidence of error on January 8 and February 27, 1998.

Following the latest merit decision, the September 24, 1996 decision, appellant requested reconsideration on October 14, 1997 and January 24, 1998. The Office denied these requests by decisions dated January 8 and February 27, 1998, respectively, finding that appellant's requests for reconsideration were not timely filed and did not present clear evidence of error on the part of the Office.

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁶ The Office will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.⁷ When an application for review is untimely, the Office undertakes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.⁸

Since more than one year elapsed from the September 24, 1996 decision to appellant's October 14, 1997 and January 24, 1998 applications for review, these requests for reconsideration are untimely. Furthermore, the evidence submitted by appellant in support of her reconsideration requests does not raise a substantial question as to the correctness of the Office's last merit decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim.

Appellant submitted evidence regarding her loss of wages and time in support of her October 14, 1997 reconsideration request. As the issue in appellant's case is a medical one, the submission of additional factual evidence is not sufficient to establish error on the part of the Office. Appellant also submitted a report dated September 10, 1997 from Dr. William H. Snyder, a clinical psychologist. Although Dr. Snyder opined that appellant's current physical condition was causally related to her employment injury, this opinion is not within his area of

Katherine A. Williamson, 33 ECAB 1696, 1705 (1982).

⁵ *Id.*

⁶ 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.138(b)(2). *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

⁸ *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

expertise and is not sufficient to establish error on the part of Office in denying that appellant's current medical condition is causally related to her accepted employment injury. Appellant also submitted a vocational report prepared by Timothy D. Bryson. As Mr. Bryson is not a physician, this report does not constitute medical evidence and therefore cannot establish error on the part of the Office in denying appellant's claim.

Appellant submitted a report dated October 2, 1997 from Dr. James K. Aymond, a Board-certified orthopedic surgeon, noting appellant's history of injury and medical history. He stated that appellant was not capable of gainful employment and that her degenerative arthritis was a preexisting condition aggravated by her employment injury. This report essentially duplicates the medical evidence submitted by Dr. Ravenel and does not offer any additional medical reasoning in support of the opinion that appellant is disabled due to her employment injury. Therefore, this evidence cannot establish error on the part of the Office. Furthermore, appellant's reconsideration request did not contain any argument which would support her claim for error on the part of the Office.

In support of her January 24, 1998 reconsideration request, appellant resubmitted Dr. Snyder's September 10, 1997 report and Dr. Aymond's October 2, 1997 report. Appellant also submitted a report dated January 30, 1998 from Dr. Snyder opining that Dr. Aymond's report was sufficient to require the Office to reopen appellant's claim and that appellant was not malingering. As noted previously, Dr. Snyder is a clinical psychologist and lacks specialized training in orthopedics. Therefore, his opinion regarding appellant's back condition is not sufficient to establish error on the part of the Office. Appellant also submitted the results of diagnostic testing. While such reports establish that appellant has a current orthopedic condition, the reports fail to provide an opinion, supported with medical rationale explaining the relationship between appellant's current condition and her accepted employment injury.

Appellant also noted that she was entitled to request reconsideration between September 24, 1996 and September 24, 1997 and that her last reconsideration request was denied on October 9, 1997. Appellant alleged that this denial did not impact her further rights to request reconsideration. As noted previously, the Office has placed limitations on the exercise of its discretion in accordance with section 8128(a) of the Federal Employees' Compensation Act. As appellant's request for reconsideration did not comply with the one-year time limitation, she was not entitled to review of the merits without establishing clear evidence of error on the part of the Office.

Appellant did not submit evidence or argument establishing that the Office committed error and the Office properly declined to reopen her claim for consideration of the merits.

The decisions of the Office of Workers' Compensation Programs dated February 27 and January 8, 1998, October 9 and May 22, 1997 are hereby affirmed.

Dated, Washington, D.C.
September 9, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member