

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CATHERINE S. KILGORE and U.S. POSTAL SERVICE,
POST OFFICE, Nashville, TN

*Docket No. 99-1682; Submitted on the Record;
Issued August 15, 2000*

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 her claim under 5 U.S.C. § 8128(a).

On June 12, 1993 appellant, a 40-year-old automation/distribution clerk, injured her right knee in a traffic accident. Appellant filed a claim for benefits on June 14, 1993 which the Office accepted for torn medial meniscus. Appellant returned to limited-duty work with the employing establishment and the Office paid her disability compensation for appropriate periods. Appellant filed a claim for recurrence of disability on June 23, 1994 which the Office accepted on October 3, 1994. Appellant was separated from the employing establishment on September 5, 1994 pursuant to a predetermined expiration date.

Appellant subsequently filed several claims for continuing compensation, covering the periods from September 11 through December 31, 1994, which were accepted by the Office. She filed a claim for continuing compensation on January 27, 1995, seeking compensation for the period January 1 through 20, 1995.

By decision dated March 13, 1995, the Office denied appellant compensation based on wage loss subsequent to December 31, 1994. The Office found that appellant was no longer employed with the employing establishment and that the medical evidence she submitted showed that she was no longer disabled for her date-of-injury job, therefore, she was no longer entitled to compensation based on wage loss.

By letter dated April 13, 1995, appellant's attorney requested an oral hearing, which was held on August 1, 1995.

By decision finalized October 6, 1995, an Office hearing representative affirmed the March 13, 1995 decision, finding that appellant did not submit medical evidence sufficient to warrant modification.

By letter dated October 1, 1996, appellant requested reconsideration of the October 6, 1995 decision. In support of her request, appellant submitted several treatment notes and results of diagnostic tests from November 1995 through April 1996 from Dr. Channappa Chandra, an orthopedic surgeon and her treating physician, which generally described appellant's condition and related her complaints of knee. Appellant also submitted affidavits and written statements from former coworkers and supervisors, which generally described appellant's job duties and the circumstances relating to her termination.

By decision dated February 5, 1997, the Office denied appellant's request for reconsideration, finding that appellant did not submit evidence sufficient to warrant modification of the March 13, 1995 decision.

On October 24, 1997 the Office granted appellant a schedule award for a 3 percent permanent impairment for loss of use of the right lower extremity for the period from April 16 to May 26, 1997, for a total of 5.76 weeks of compensation.

By letter dated December 17, 1997, appellant requested reconsideration. In support of her request, appellant submitted an April 16, 1997 Form CA-17 from Dr. Chandra, reports from him dated February 7 and 28 and April 16, 1997, and job descriptions and written statements from employing establishment management.

By decision dated January 21, 1998, the Office denied appellant's request for reconsideration, finding that appellant did not submit evidence sufficient to warrant modification of the February 5, 1997 decision.

By letter dated October 23, 1998, appellant requested reconsideration of the October 24, 1997 decision, contending that she was entitled to an award greater than that awarded by the Office. In support of her claim, appellant submitted reports dated April 16, 1997 and August 16, 1995 from Dr. Chandra, medical reports dated January 19 and 21, 1998 from Dr. James Cooper, an osteopath, a May 28, 1998 report from Dr. Benjamin Johnson, Board-certified in internal medicine and medical records from Vanderbilt University Medical Center dated June 30 and October 16, 1998 and results of a magnetic resonance imaging scan dated October 5, 1998.

By decision dated December 21, 1998, 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.

By letter dated January 20, 1999, appellant requested reconsideration of the March 13, 1995 decision. In support of her request, appellant submitted the medical records from Vanderbilt University Medical Center dated June 30 and October 16, 1998 and a November 17, 1997 letter from the Office authorizing treatment at the Vanderbilt Pain Clinic.

By decision dated January 29, 1999, 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 her claim under 5 U.S.C. § 8128(a).

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.¹ 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.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

With regard to the October 23, 1998 request for reconsideration, appellant has not shown that the Office erroneously applied or interpreted a point of law, she has not advanced a point of law or fact not previously considered by the Office and she has not submitted relevant and pertinent evidence not previously considered by the Office. Although appellant submitted reports from Drs. Chandra, Johnson, Cooper and from Vanderbilt Medical Center, which noted that she had been treated for right knee pain, none of these reports contained an opinion as to whether she was entitled to an award for greater impairment in her right lower extremity than that which she had already received. Thus, her request did not contain any new and relevant medical evidence for the Office to review. This is important since the outstanding issue in this case is whether appellant was entitled to a schedule award greater than the three percent permanent impairment award for loss of use of the right lower extremity she received from the Office. All of the other medical evidence submitted by appellant was previously of record and considered by the Office in reaching prior decisions. Additionally, appellant's October 23, 1998 letter did not show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Although appellant generally contended she was entitled to a schedule award greater than that she already received from the Office, appellant failed to submit new and relevant 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 Board, therefore, affirms the Office's December 21, 1998 decision.

With regard to the January 20, 1999 request for reconsideration, under 20 C.F.R. § 10.607,⁴ a claimant may obtain review of the merits of his or her claim by showing that the

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

² 20 C.F.R. § 10.138(b)(2).

³ *Howard A. Williams*, 45 ECAB 853 (1994).

⁴ 20 C.F.R. § 10.607; effective January 4, 1999.

Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent new evidence not previously considered by the Office.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

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law, she has not advanced relevant legal argument not previously considered by the Office and she has not submitted relevant and pertinent evidence not previously considered by the Office. Although appellant submitted the medical records from Vanderbilt University Medical Center dated June 30 and October 16, 1998 and a November 17, 1998 letter from the Office authorizing treatment for her right knee at the Vanderbilt Pain Clinic, these reports did not contain an opinion as to whether appellant was entitled to compensation based on wage loss subsequent to December 31, 1994. All of the other evidence appellant submitted was previously of record and considered by the Office in reaching prior decisions. Thus, her request did not contain any new and relevant medical evidence for the Office to review. This is important since the outstanding issue in the case whether appellant was entitled to compensation based on wage loss subsequent to December 31, 1994 -- was medical in nature. All of the other medical evidence submitted by appellant was previously of record and considered by the Office in reaching prior decisions. Additionally, appellant's January 20, 1999 letter did not show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Although appellant generally contended she was entitled to compensation based on wage loss subsequent to December 31, 1994, appellant failed to submit new and relevant 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 Board, therefore, affirms the Office's January 29, 1999 decision.

⁵ 20 C.F.R. § 10.607; *see generally* 5 U.S.C. § 8128(a).

⁶ *Howard A. Williams*, 45 ECAB 853 (1994).

The January 29, 1999 and December 21, 1998 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
August 15, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member