

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANDRES E. SANTIAGO and U.S. POSTAL SERVICE,  
POST OFFICE, Albuquerque, NM

*Docket No. 00-512; Submitted on the Record;  
Issued December 11, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether appellant has met his burden of proof to establish that he has a permanent eye impairment entitling him to a schedule award; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further reconsideration constituted an abuse of discretion.

On February 24, 1997 appellant, then a 48-year-old clerk, filed a claim for traumatic injury (Form CA-1) alleging that on February 20, 1997 he sustained an injury to the right side of his head while in the performance of duty.

On March 20, 1997 the Office accepted appellant's claim for a mild concussion.

On July 16, 1998 appellant filed a claim for a schedule award for an eye condition.

By decision dated March 8, 1999, the Office denied appellant's claim. In an attached memorandum, the Office noted that appellant's medical evidence did not support his allegation that his eye condition was caused by his work-related injury of February 20, 1997.

By letter received by the Office on June 11, 1999, appellant requested reconsideration.

By decision dated September 1, 1999, the Office denied appellant's request for reconsideration. The Office noted that appellant's evidence had been previously considered.

In a medical report dated February 24, 1997, Dr. David Neidhart stated that he had examined appellant on that day pursuant to his work-related injury and noted a history of migraine headaches and a normal eye examination.

In a medical report dated March 3, 1997, Dr. Frank S. Jones noted that he examined appellant as a follow up to his work-related injury on February 20, 1997. He stated that appellant complained of "floaters" in his eyes but that, upon examination, his eye examination

was normal, pupils equal and reacted to light, he also noted that a fundescopic examination was normal and that no cataracts were found. Dr. Jones stated that no further treatment was indicated regarding his head trauma and advised appellant to see his eye doctor if he remained symptomatic with floaters.

In a medical report dated March 3, 1997, Dr. Neidhart stated that he examined appellant pursuant to a follow-up examination that day and found that he had reached maximum medical improvement with no permanent impairment and that his eye examination was normal.

In a medical report dated January 9, 1998, Dr. Bruce Onofrey stated that he examined appellant that day and found no ocular basis for appellant's subjective complaints of seeing spots since the February 20, 1997 work-related injury.

In a medical report dated February 27, 1997 and received by the Office on July 10, 1997, Dr. Jones stated that appellant's funduscopic examination was normal and that his pupils are equal in size and react normally to light.

In an attending physician's report dated September 16, 1998, Dr. Onofrey stated that appellant had a history of retinal lattice degeneration unrelated to his work-related injury, that there was no objective basis for symptoms and that did not limit his ability to work.

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The Office has adopted, and the Board has approved, of the use of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,<sup>3</sup> as an appropriate standard for evaluating schedule losses.<sup>4</sup>

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury to his eye as a result of his February 20, 1997 employment injury.

In this case, none of the medical reports establish that appellant has a permanent impairment as a result of his work-related injury. Dr. Neidhart, appellant's attending physician, examined appellant after the February 20, 1997 injury and found that his eye examination was normal. Dr. Jones stated that appellant's eye examination was normal, that his pupils were equal and reacted to light, that his fundescopic examination was normal and that no cataracts were found. Dr. Onofrey stated that he could find no ocular basis for appellant's subjective

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> A.M.A., *Guides* (4<sup>th</sup> ed. 1993).

<sup>4</sup> *Andrew Aaron, Jr.*, 48 ECAB 141 (1996).

complaints of floaters. The medical reports of record are not sufficient to establish that appellant has any eye impairment due to his employment injury and therefore is not entitled to a schedule award.

The Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>5</sup> the Office's regulations provide that the application for reconsideration be submitted in writing and: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>6</sup> When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.<sup>7</sup> To be entitled to merit review of an Office decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.<sup>8</sup>

The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case<sup>9</sup> and that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>10</sup> However, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.<sup>11</sup>

In his June 11, 1999 reconsideration request, appellant did not show that the Office erroneously applied or interpreted a point of law nor did he advance a point of law or fact not previously considered by the Office. He resubmitted Dr. Onofrey's September 16, 1998 report wherein he stated that he could find no ocular basis for appellant's condition. Consequently, the evidence submitted by appellant did not meet the requirements as set forth in the Office's regulations.

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<sup>5</sup> Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.606(b).

<sup>7</sup> *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

<sup>8</sup> 20 C.F.R. § 10.607(a).

<sup>9</sup> *Daniel Deparini*, 44 ECAB 657 (1993); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>10</sup> *Richard L. Ballard*, 44 ECAB 146 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

<sup>11</sup> *See Helen E. Tschantz*, 39 ECAB 1382 (1988).

For these reasons, the Office's refusal to reopen the case for further merit review did not constitute an abuse of discretion.

The decisions of the Office of Workers' Compensation Programs dated September 21 and March 8, 1999 are hereby affirmed.

Dated, Washington, DC  
December 11, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member