

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEBORAH A. CARNEGIE and U.S. POSTAL SERVICE,  
POST OFFICE, Oakland, CA

*Docket No. 98-445; Submitted on the Record;  
Issued February 1, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

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

In the present case, the Office accepted that appellant, a mail carrier, sustained a chronic lumbar dysfunction syndrome with chronic degenerative disc disease of the lumbosacral spine as a result of her injury on June 2, 1988. Appellant worked light duty for a period of time and resigned from the employing establishment on October 25, 1990. The Office terminated appellant's compensation benefits by decision dated September 17, 1992 and denied modification of the September 17, 1992 decision on July 25, 1996. The Office denied reconsideration of the claim on August 14, 1997.

The Board finds that the Office properly refused to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128.

The only decision before the Board on this appeal is the August 14, 1997 Office decision, which found that appellant, in her request for reconsideration, had not submitted sufficient evidence to warrant review of the Office's July 25, 1996 decision. Since more than one year has elapsed between the issuance of the September 17, 1992 and July 25, 1996 decisions and November 12, 1997, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review those decisions.<sup>1</sup>

To require the Office to reopen a case for reconsideration, section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides in relevant part that a claimant may obtain review of the merits of his claim by written request to the Office identifying the decision and

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<sup>1</sup> See 20 C.F.R. § 501.3(d)(2).

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.”<sup>2</sup>

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.<sup>3</sup> Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128 of the Federal Employees’ Compensation Act.<sup>4</sup>

In his March 25, 1997 report, Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, noted that appellant has had a problem with her low back since 1986, while working for the employing establishment and has had a problem since that time. He noted that the low back problems began when she was pregnant, but never before she was pregnant. During that period of time, appellant was a letter carrier and walked with a mail pouch, which often weighed up to 50 pounds. Dr. Swartz noted that a July 12, 1988 computerized tomography scan of the lumbar spine revealed a bulge at the L5-S1 disc and an L5-S1 disc protrusion was found on October 5, 1990. Physical examination revealed tenderness in the lumbosacral spine, with a 50 percent limitation of motion. There were no neurologic findings. There was pain with straight leg raise on the right. Dr. Swartz stated that appellant appears to have a symptomatic lumbosacral disc protrusion or herniation along with right lower extremity sciatic nerve findings, including ½” of right thigh atrophy and positive straight leg raise on the right. Dr. Swartz opined that it appears that appellant has ongoing problems related to her work-related injury to her low back of 1986 while employed by the U.S. Postal Service. He requested an authorization for a magnetic resonance imaging scan.

The Board finds that this report from Dr. Swartz did not provide any new findings and is duplicative of his May 29, 1989 report. In that report, Dr. Swartz had concluded that if the history was correct and appellant did not have prior problems with her low back, then any disability or discomfort would appear to be work related to her job as a letter carrier. He stated that appellant’s condition appeared to be essentially permanent and there does not appear to be any nonindustrial or preexisting disability. The Board finds that the August 14, 1997 report from Dr. Swartz does not provide any new findings and is duplicative of his earlier report of May 29,

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<sup>2</sup> 20 C.F.R. § 10.138(b)(1).

<sup>3</sup> 20 C.F.R. § 10.138(b)(2).

<sup>4</sup> *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

1989 with regard to his causation finding. The Board has held that evidence, which repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case.<sup>5</sup>

As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally 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.<sup>6</sup> The Board finds no evidence in the case record of any such abuse of discretion.

Accordingly, appellant did not provide a sufficient evidentiary basis for reopening her claim and the Office properly employed its discretion in refusing to reopen the case for further review on the merits.<sup>7</sup>

The Office of Workers' Compensation Programs' decision dated August 14, 1997 is affirmed.

Dated, Washington, D.C.  
February 1, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>5</sup> *Saundra B. Williams*, 46 ECAB 546 (1995).

<sup>6</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

<sup>7</sup> *Jimmy O. Gilmore*, 37 ECAB 257, 262 (1985).