

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOSEPH J. BROOKS and DEPARTMENT OF THE NAVY,  
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 98-1474; Submitted on the Record;  
Issued January 7, 2000*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has established a recurrence of disability beginning January 12, 1997 that is causally related to his accepted June 1993 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied merit review of appellant's request for reconsideration under section 8128 of the Federal Employees' Compensation Act.

On June 14, 1993 appellant, then a 54-year-old marine machinist, filed an occupational disease claim, alleging that he sustained herniated discs of which he first became aware and realized were causally related to factors of his federal employment on June 11, 1993. Appellant did not stop work. The Office accepted appellant's claim for herniated nucleus puposus at the L2-3 level and L5 to S1 level and radiculitis of the lumbosacral spine. On August 1, 1994 appellant filed a claim for recurrence of disability beginning October 11, 1993. Appellant did not stop work. The Office accepted this recurrence of disability on August 29, 1994. On June 5 and August 23, 1995 appellant filed claims for schedule awards. On August 9, 1995 the Office advised appellant that his back was not a compensable member for a schedule award under the Act. In a letter dated October 1, 1996, the Office returned a bill to appellant on the grounds that his claim had been closed more than 180 days. The Office advised appellant he could file a claim for recurrence to reopen his case. On January 12, 1997 appellant filed a claim for recurrence of disability. In a supplemental statement appellant indicated that he was retired due to base closure in September 1995 and had changed his trade and began dog grooming. However, his back problems prevented him from continuing in this employment. In a decision dated April 15, 1997, the Office denied appellant's claim for recurrence on the grounds that the evidence did not establish that the claimed recurrence of disability was causally related to his June 11, 1993 injury. By decision dated August 12, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and was not sufficient to reopen the record.

The Board has duly reviewed the entire case record and finds that appellant has not established a recurrence of disability on or about January 12, 1997.<sup>1</sup>

Where appellant claims recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.<sup>2</sup> This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>3</sup>

In the present case, appellant contends that he sustained a recurrence of disability, asserting that his use of medication, pain and restriction on his movements never stopped after his initial employment injury. In a letter dated March 12, 1997, the Office notified appellant that the evidence of record was insufficient to approve his claim and advised him that he needed a rationalized medical report to substantiate that his claimed recurrence was causally related to his original injury. Appellant submitted several form medical reports dated March 13 and 24, 1997 by Dr. Joseph Zerbo, an osteopath, who diagnosed degenerative disc disease as well as disc herniation at the L5 level and checked a box to indicate that this condition was causally related to appellant's June 1993 employment injury. He also submitted an office note dated January 31, 1997, in which he reported that appellant had a history of an injury in June 1993, had retired in 1995 and tried to go back to work, but was limited by back and leg pain. Dr. Zerbo concluded that appellant appeared to have degenerative disc disease with disc herniation. The form reports by Dr. Zerbo are insufficient to establish a causal nexus between appellant's accepted employment injury and his claimed recurrence. Although Dr. Zerbo checked a box to indicate that the claimed condition was related to the provided history of injury, this conclusion is not rationalized as he does not provide any explanation or rationale for his opinion that the diagnosed medical condition was causally related to the June 1993 injury. Therefore, these reports are insufficient to meet appellant's burden of proof.<sup>4</sup> The January 1997 office note by Dr. Zerbo is silent regarding whether the diagnosed condition is causally related to appellant's accepted employment injury. It, therefore, cannot discharge appellant's burden of proof. Appellant has not established that he sustained a recurrence of disability on or after January 12, 1997.

The Board also finds that the Office properly denied appellant's request for reconsideration.

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<sup>1</sup> 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. As appellant filed his appeal with the Board on March 24, 1998, the only decisions before the Board are the Office's April 15 and August 12, 1997 decisions. *See* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>2</sup> *John E. Blount*, 30 ECAB 1374 (1979).

<sup>3</sup> *Frances B. Evans*, 32 ECAB 60 (1980).

<sup>4</sup> *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. 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 requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>5</sup> 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.<sup>6</sup> Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>7</sup>

On reconsideration, appellant submitted medical reports from 1995 which had previously been reviewed by the Office in relation to his initial employment injury, magnetic resonance imaging (MRI) scans of the spine and a medical report by Dr. Zerbo dated May 12, 1997. The 1995 medical report is not relevant to appellant's claimed 1997 recurrence of disability. The MRI scans do not address the central issue in this case of whether appellant has established a recurrence of disability on or after January 12, 1997 that is causally related to his accepted employment injury. Finally, the May 12, 1997 report by Dr. Zerbo is duplicative of his January 31, 1997 note which was previously reviewed by the Office. Therefore, as the evidence submitted by appellant is irrelevant, duplicative or does not address the central issue in this case, it is not sufficient to establish a basis for reopening the record. The Office properly denied appellant's request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated August 12 and April 15, 1997 are hereby affirmed.

Dated, Washington, D.C.  
January 7, 2000

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski

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<sup>5</sup> 20 C.F.R. § 10.138(b)(2).

<sup>6</sup> *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

<sup>7</sup> *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

Alternate Member