

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GERALD A. PAGEAU and U.S. POSTAL OFFICE,  
POST OFFICE, Glendale, AZ

*Docket No. 98-2186; Submitted on the Record;  
Issued July 3, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

On October 24, 1995 appellant, then a 54-year-old data transcriber, filed a claim for occupational disease, alleging that his bilateral cervical radiculopathy, compromise of right ulnar nerve condition at right elbow and mild bilateral carpal tunnel syndrome were caused by factors of federal employment. He noted that he was first aware of his conditions on August 31, 1995 and initially believed that his conditions were caused by his employment on April 5, 1996. Appellant further noted that he did not report his conditions within 30 days because he was not aware of the obligation to do so, that he was afraid of retaliation for filing, and that he had hoped he could work through his conditions.

The Office, in a February 11, 1997 decision, denied appellant's claim on the grounds that the medical evidence submitted was insufficient to establish a causal relationship between appellant's conditions and factors of his federal employment.

Appellant filed a request for reconsideration on January 31, 1998 and submitted a January 9, 1998 medical report from Dr. Richard L. Matthews, a Board-certified neurologist and appellant's treating physician.

By nonmerit decision dated April 15, 1998, the Office denied appellant's request for review of the February 11, 1997 decision on the grounds that the evidence submitted in support of his request was essentially cumulative and therefore insufficient to warrant a merit review.

The only decision over which the Board has jurisdiction is the April 15, 1998 nonmerit Office decision since more than one year elapsed between the filing of the appeal on July 9, 1998 and the most recent merit decision of the Office, issued on February 11, 1997. The Board's

regulations provide that the Board only has jurisdiction over decisions issued within a year of the filing of the appeal.<sup>1</sup>

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 Federal Employees' Compensation Act,<sup>2</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.<sup>3</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>4</sup> To be entitled to merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>5</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>6</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>7</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>8</sup>

In his January 31, 1998 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. Dr. Matthews' January 9, 1998 report, noting appellant's medical conditions concerning his hands, fingers, headaches, ear aches and leg pain, is essentially repetitive of the doctor's prior reports and does not establish a causal relationship between appellant's conditions and his federal employment. Consequently, the evidence

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<sup>1</sup> 20 C.F.R. § 501.3(d)(2).

<sup>2</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>3</sup> 20 C.F.R. 10.138(b)(1) and (2).

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

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

<sup>6</sup> *Daniel Deparini*, 44 ECAB 657 (1993); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>7</sup> *Richard L. Ballard*, 44 ECAB 146 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

<sup>8</sup> *See Helen E. Tschantz*, 39 ECAB 1382 (1988).

submitted by appellant did not meet the requirements set forth at 20 C.F.R. § 10.138(b)(1), noted above.

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

The April 15, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.  
July 3, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member