

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA G. NOTTAGE and U.S. POSTAL SERVICE,
POST OFFICE, Fort Lauderdale, FL

*Docket No. 99-390; Submitted on the Record;
Issued July 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
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).

Appellant, a 37-year-old clerk, filed a claim for benefits on April 7, 1995, alleging that she injured her left hip and left thigh while turning her body on April 4, 1995. The Office accepted appellant's claim for lumbar strain.

On October 17, 1995 appellant requested compensation for loss of wages for the period September 15 through September 22, 1995. Appellant subsequently sought compensation for loss of wages for intermittent periods, claiming compensation based on the April 4, 1995 employment injury.

By decision dated May 20, 1996, the Office denied appellant's claim on the grounds that the evidence of record failed to establish any compensable time lost due to the accepted condition.

By letter dated June 14, 1996, appellant's representative requested a review of the written record.

By decision dated April 18, 1997, an Office hearing representative affirmed the May 20, 1996 Office decision, finding that appellant failed to submit medical evidence sufficient to warrant modification.

By letter dated April 12, 1998, appellant's representative requested reconsideration of the Office's previous decision. In support of her claim, appellant submitted a March 26, 1998 report from Dr. Benjamin F. Isom, a clinical psychologist, a May 30, 1997 affidavit from her union steward and a copy of a Form CA-2, for a new injury, which was already filed with the Office. In his report, Dr. Isom related that appellant experienced stress and depression as a result of

being verbally abused and insulted by her supervisors at work, but did not provide an opinion regarding whether appellant's claimed physical condition or disability was caused or contributed to by the April 4, 1995 work injury.

By decision dated September 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.

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).

The only decision before the Board on this appeal is the September 21, 1998 Office decision, which found that the letter submitted in support of appellant's request for reconsideration was insufficient to warrant review of its prior decision. Since the September 21, 1998 decision is the only decision issued within one year of the date that appellant filed her appeal with the Board, October 14, 1998, this is the only decision over which the Board has jurisdiction.¹

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; (1) the Office erroneously applied or interpreted a point of law; (2) by advancing a point of law or fact not previously considered by the Office; (3) or by submitting relevant and pertinent evidence not previously considered by the Office.² 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.³ 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.⁴

In the present case, 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 Dr. Isom's report with her request for reconsideration, this evidence is not relevant because Dr. Isom is a psychologist and his opinion regarding appellant's alleged emotional condition has no bearing on her physical condition.⁵ The other two documents appellant submitted, the affidavit and copy of a form report, do not contain any medical evidence and are not pertinent to the outstanding issues in this case. 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 beginning September 15, 1995 due to her accepted lumbar

¹ See 20 C.F.R. § 501.3(d)(2).

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

³ 20 C.F.R. § 10.138(b)(2).

⁴ *Howard A. Williams*, 45 ECAB 853 (1994).

⁵ The Board notes that the Office never accepted a claim based on an emotional condition in this case.

strain condition -- was medical in nature. All the other medical evidence submitted by appellant was previously of record and considered by the Office in reaching prior decisions. Additionally, the April 12, 1998 letter from appellant's representative 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 had sustained a condition and/or disability causally related to her April 4, 1995 work injury, resulting in a loss of wages beginning September 15, 1995, 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 decision of the Office of Workers' Compensation Programs dated September 21, 1998 is hereby affirmed.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member