

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY A. PEAL and DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, GA

*Docket No. 99-645; Submitted on the Record;
Issued July 26, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for review of the merits on November 30, 1998; and (2) whether the Office properly denied appellant's request for an oral hearing.

The Board has duly reviewed the case on appeal and finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits.

Appellant, a management assistant, filed a claim on December 6, 1995 alleging that on December 5, 1995 she sprained both of her ankles in the performance of duty. On May 16, 1996 appellant filed a notice of recurrence of disability alleging that on March 28, 1996 she developed pain in her right shoulder causally related to her accepted employment injury. The Office accepted appellant's claim for bilateral ankle strain on September 20, 1996. The Office denied appellant's claim for a shoulder injury by decision dated March 3, 1997. However, the Office accepted that appellant sustained a low back strain. Appellant requested an oral hearing and by decision dated August 14, 1997, the hearing representative found that appellant failed to meet her burden of proof in establishing that she developed a shoulder condition causally related to her accepted employment injury. Appellant requested reconsideration of this decision on August 26, 1997. The Office declined to reopen appellant's claim for review of the merits on October 3, 1997. Appellant requested an oral hearing on January 15, 1998. The Branch of Hearings and Review denied appellant's request by decision dated February 26, 1998 finding that she was not entitled to an oral hearing as she had previously requested reconsideration. On September 22, 1998 the Office accepted the additional conditions of herniated disc L3-S1 and authorized surgery. The Office entered appellant on the periodic rolls. Appellant requested reconsideration of the Office's August 14, 1997 decision on October 27, 1998. By decision dated November 30, 1998, the Office declined to reopen appellant's claim for consideration of the merits.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.¹ 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.²

In support of her request for reconsideration, appellant resubmitted medical evidence previously considered by the Office. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.³ As appellant failed to submit relevant new evidence, the Office properly declined to reopen her claim for consideration of the merits.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for an oral hearing.

Section 8124(b) of the Federal Employees' Compensation Act,⁴ concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."⁵

In the instant case, the Office properly determined appellant's January 15, 1998 request for a hearing was made after her August 26, 1997 request for reconsideration and the Office's October 3, 1997 decision denying merit review of the same issue. The Office, therefore, properly denied appellant's hearing as a matter of right.

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. The Office determined that a hearing was not necessary as the issue in the case could be resolved through the reconsideration process. Therefore, the Office properly denied appellant's request for a hearing as she had previously requested review under section 8128(a) and properly exercised its discretion in determining to deny appellant's request for a hearing as she had other review options available.

The November 30 and February 26, 1998 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

¹ 20 C.F.R. § 10.138(b)(1).

² 20 C.F.R. § 10.138(b)(2).

³ See *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 5 U.S.C. § 8124(b)(1).

Dated, Washington, D.C.
July 26, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member