

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BENJAMIN H. ROBERTSON and U.S. POSTAL SERVICE,
ATLANTA BULK MAIL CENTER, Atlanta, GA

*Docket No. 99-942; Submitted on the Record;
Issued July 26, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On March 8, 1994 appellant, then a 51-year-old manager of maintenance operations, was climbing and bending to inspect a mail jam and broken bearing in a piece of postal machinery when he developed back pain. He stopped working on March 13, 1994 and received continuation of pay from March 13 through April 27, 1994. The Office accepted appellant's claim for lumbar strain. He returned to light duty, part-time work on April 18, 1994. He used sick leave, four hours a day, from April 28 through May 13, 1994. The Office began payment of compensation for the hours appellant did not work effective May 16, 1994. Appellant stopped working January 7, 1995 and the Office began payment of temporary total disability compensation.

In a March 15, 1996 decision, the Office terminated appellant's compensation effective that date on the grounds that the evidence of record showed that the effects of the March 8, 1994 employment injury had ceased and resulted in no disability for work and loss of wage-earning capacity as of the date of the decision. In a May 22, 1996 letter, appellant requested reconsideration. In an August 8, 1996 merit decision, the Office denied appellant's modification of the March 15, 1996 prior decision. In a March 5, 1997 letter, appellant again requested reconsideration. In an April 4, 1997 merit decision, the Office again denied modification of the prior decisions. In a January 28, 1998 letter, appellant again requested reconsideration. In an October 23, 1998 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was cumulative and therefore insufficient to warrant review of the prior decisions.

The Board's jurisdiction extends to final decisions of the Office issue within one year prior to the filing of an appeal to the Board.¹ In this case, appellant's appeal was filed on January 22, 1999. The Board therefore has jurisdiction to consider only the Office's October 28, 1998 decision.

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

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his 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 three requirements, the Office will deny the application for review without reviewing the merits of the claim.² 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.³ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁴

Appellant's attorney argued that the Office, in its April 4, 1997 decision, had erred in finding that a February 17, 1997 medical statement prepared by him and signed by appellant's treating physician, Dr. Paul Richin, was discounted because it was not written entirely by Dr. Richin. In that statement, Dr. Richin stated that appellant's lumbar strain had activated and aggravated his preexisting degenerative disc disease. The Board notes that the Office discounted the February 17, 1997 statement not solely for the reason set forth by the attorney but because Dr. Richin, prior to the termination of appellant's compensation, had not previously stated that appellant's employing establishment had aggravated his degenerative joint disease. The Office also noted that in the statement, Dr. Richin based his conclusion that a causal relationship existed because appellant had no back pain prior to the employment injury but had pain after the employment injury which the Office concluded was not an adequate rationale to support an opinion on causal relationship between an employment injury and a subsequent condition. The argument of appellant's attorney that medical evidence previously submitted was improperly considered has no reasonable legal color of validity.⁵

Appellant also submitted an October 11, 1996 report from Dr. Richin which had not been submitted previously. In that report, Dr. Richin stated that the March 8, 1994 employment injury aggravated appellant's preexisting degenerative disc disease because appellant did not have

¹ 20 C.F.R. § 501.3(d).

² 20 C.F.R. 10.138(b)(2).

³ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁴ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁵ *Constance G. Mills*, 40 ECAB 317 (1988).

problems arising from his degenerative disc disease until after the employment injury. He commented that it was difficult to tell whether appellant was continuing to suffer from the employment-related lumbar sprain because appellant's problem was not caused by the sprain but by the degenerative problems in his back that were probably activated and irritated by the sprain. This report is duplicative of the February 17, 1997 statement previously considered by the Office as it presents that same opinion on the issue of causal relationship on the basis of the same rationale. As the October 11, 1996 report is duplicative evidence, it is insufficient to warrant further review of the Office's termination of appellant's compensation.

The decision of the Office of Workers' Compensation Programs dated October 28, 1998 is hereby affirmed.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member