

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CARL H. BLOESER and DEPARTMENT OF THE ARMY,  
Fort Huachuca, AZ

*Docket No. 98-1719; Submitted on the Record;  
Issued June 28, 2000*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on June 4, 1997.

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 on June 4, 1997.

On February 24, 1991 appellant, a library technician, filed a claim alleging that on January 29, 1991 he injured his low back in the performance of duty. The Office accepted his claim for lumbar stenosis on April 25, 1991. The Office entered appellant on the periodic rolls beginning April 5, 1992. By decision dated August 7, 1995, the Office terminated his compensation benefits. Appellant requested a review of the written record and by decision dated January 23, 1996, the hearing representative affirmed the Office's August 7, 1995 decision. By decision dated May 30, 1996, the hearing representative reviewed appellant's claim on his own motion finding that appellant had submitted additional evidence which was not previously associated with the case file. The hearing representative affirmed the August 7, 1995 and January 23, 1996 decisions. Appellant requested reconsideration on May 12, 1997 alleging that the second opinion physician was incompetent and that the Office failed to respond to Freedom of Information Act requests. By decision dated June 4, 1997, the Office declined to reopen appellant's claim for review of the merits.

Section 10.138(b)(1) 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.<sup>1</sup> 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.<sup>2</sup>

In support of his argument that the second opinion physician, Dr. Lloyd Anderson, a Board-certified neurosurgeon, was incompetent to conduct his examination, appellant resubmitted documents from the Board of Medical Examiners for the state of Michigan previously submitted to 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.<sup>3</sup> Appellant had also previously raised the issue of Dr. Anderson's competence prior to his examination on May 10, 1995. Therefore neither the evidence nor the argument that Dr. Anderson was not competent is new as the Office considered both the evidence and the argument before reaching its August 7, 1995 decision. Appellant neither submitted relevant new evidence nor raised an issue of law not previously considered by the Office.

Appellant also submitted a letter dated May 9, 1997. He alleged that the Office and the employing establishment denied him critical records necessary to file an appeal or reconsideration. Appellant submitted requests for illegalities from the employing establishment and a letter to the Secretary of Labor requesting aid in locating missing documents. These documents do not constitute relevant new evidence regarding appellant's claim for continuing compensation benefits and do not show that the Office erroneously applied or interpreted a point of law; nor do the documents advance a point of law or a fact not previously considered by the Office. As appellant has not complied with the requirements of section 10.138(b), the Office properly declined to reopen his claim for review of the merits.

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<sup>1</sup> 20 C.F.R. § 10.138(b)(1).

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

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

The decision of the Office of Workers' Compensation Programs dated June 3, 1997 and finalized on June 4, 1997 is hereby affirmed.

Dated, Washington, D.C.  
June 28, 2000

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member