

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PRISCILLA M. RYAN and DEPARTMENT OF VETERANS AFFAIRS,  
MIAMI VETERANS HOSPITAL, Miami, FL

*Docket No. 98-2153; Submitted on the Record;  
Issued June 26, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

This case has previously been on appeal.<sup>1</sup> On the first appeal, the Board reviewed a July 22, 1994 decision, by which the Office found that the evidence of record failed to establish that appellant continued to be disabled from the accepted condition of a temporary exacerbation of preexisting anxiety after September 30, 1992. The Office found that the weight of the medical evidence consisting of the opinion of the referral physician, Dr. Larry Benovitz, a Board-certified psychiatrist, that appellant's psychiatric symptomatology related to her work would have dissipated within a two-year period and the fact that appellant stopped working in September 1990 established that appellant no longer had a work-related disability after September 30, 1992. The Board found that the Office properly terminated benefits based on Dr. Benovitz's opinion and the absence of any well-rationalized medical reports in the record establishing appellant continued to have a work-related disability.

By order denying petition for reconsideration dated April 15, 1997, No. 94-2428, the Board denied appellant's request for reconsideration of the October 16, 1996 decision.

By letter dated November 13, 1996, appellant requested reconsideration from the Office.

By decision dated May 14, 1997, the Office denied appellant's request for modification.

By letter dated May 8, 1998, appellant requested reconsideration of the Office's decision, and submitted additional evidence. Specifically, she submitted the medical Form, WPA376, dated March 1, 1993, from Dr. Benovitz which she previously submitted. Appellant also submitted a letter dated June 10, 1993 from the employing establishment's medical director, T.C. Doherty, to the Office requesting that the Office review appellant's and her husband's claims and an agency certification of reassignment and accommodation efforts, Form 3105D, dated

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<sup>1</sup> Docket No. 94-2428 (issued October 16, 1996). The facts and history surrounding the prior appeal are set forth in the initial decision and is hereby incorporated by reference.

November 14, 1990, stating that appellant's medical condition did not allow for accommodation. Appellant contended that Dr. Benovitz's opinion was contradictory because in his February 23, 1993 report, he stated that "the present symptomatology relayed by [appellant] is an exacerbation of the preexisting anxiety condition" and in his July 7, 1994 report, without the notes of appellant's treating physician, Dr. Joseph J. Lapeyra, a psychiatrist, he concluded that appellant recovered from her work-related disability in September 1990. Appellant stated that Dr. Benovitz gave his opinion five months after the disability ended. She also requested that the case be referred to an impartial medical specialist to resolve the conflict between Drs. Lapeyra and Benovitz as to whether she continued to be disabled due to her work-related emotional condition.

Further, appellant contended that the Office "should have required" that the employing establishment offer her either her former position or an equivalent position in June 1993 based on Dr. Benovitz's March 1, 1993 report, *i.e.*, Form WPA376, in which he stated that as of that date appellant could "function at a higher level." Referring to the June 10, 1993 letter from Mr. Doherty and to the November 14, 1990 certification of reassignment and accommodation efforts, appellant stated that discrimination against her husband in the workplace was extended to her by the employing establishment's failing to offer her a position and the Office and the employing establishment "appeared to be [in an] agreement ... to deny her rights under the compensation laws."

By decision dated May 19, 1998, the Office denied appellant's request for reconsideration.

The Board has duly reviewed the case record and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a) of Federal Employees' Compensation Act, did not constitute an abuse of discretion.

Since more than one year had elapsed from the date of the Office's May 14, 1997 decision, to the filing of appellant's appeal on June 24, 1998, the Board lacks jurisdiction to review that decision.<sup>2</sup> The only decision before the Board on this appeal is the Office's May 14, 1997 decision, denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of Act,<sup>3</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>4</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>5</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for

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<sup>2</sup> See *Michael A. Gnoth*, 41 ECAB 988, 991 (1990); 20 C.F.R. § 10.138(b)(2).

<sup>3</sup> 5 U.S.C. § 8181 *et seq.*

<sup>4</sup> 20 C.F.R. §§ 10.138(b)(1) and (2).

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

reopening a case.<sup>6</sup> Evidence that does not address the particular issue involved, in the present case of whether evidence of record establishes that appellant had a continuing work-related disability after September 30, 1992, does not constitute a basis for reopening the case.<sup>7</sup>

None of the evidence appellant submitted in her request for reconsideration is relevant to establishing that her disability continued after September 30, 1992. The Board and the Office previously considered Dr. Benovitz's February 22, 1993 and July 7, 1994 reports as well as the opinions of appellant's treating physicians including Dr. Lapeyra and found that Dr. Benovitz's opinion was entitled to the weight of the evidence. In the arguments appellant presents that the employing establishment did not provide her with a job or allegedly was discriminating against her as well as her husband are not relevant to the issue of whether the medical evidence established that she no longer suffered from a work-related disability. Appellant, therefore, did not show that the Office erroneously applied or misinterpreted a point of law, did not advance a point of law or fact not previously considered by the Office or submit relevant and pertinent evidence not previously considered by the Office. Appellant has, therefore, not established that the Office abused its discretion in its May 19, 1998 decision by denying her request for a review on the merits of its May 14, 1997 decision.

The decision of the Office of Workers' Compensation Programs dated May 19, 1998 is hereby affirmed.

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

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>6</sup> *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>7</sup> *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).