

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVE K. SCHAFER and U.S. POSTAL SERVICE,
POST OFFICE, Warren, MI

*Docket No. 99-1075; Submitted on the Record;
Issued June 19, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

On March 31, 1997 appellant, then a 29-year-old distribution clerk, filed a notice of traumatic injury and claim for compensation alleging that on March 27, 1997 he felt a snap in his lower back while he was twisting and lifting mail into large cases. He stopped work on April 1, 1997 and returned to work April 7, 1997.

To support the claim appellant submitted an evaluation from Dr. A.J. Brewer and doctor's progress notes from March 31 and April 3, 1997. Dr. Brewer, a specialist in occupational medicine, diagnosed appellant with a lower back strain which was attributed to repetitive twisting and lifting performed in the course of his employment. The progress notes also supported the diagnosis of lumbar strain.

On April 7, 1997 appellant returned to work on limited duty. A Form CA-3 filed April 8, 1997 indicated that appellant received continuation of pay from April 1 until April 6, 1997.

In an April 16, 1997 letter, the Office advised appellant that his claim was accepted for lumbosacral strain.

On May 2, 1997 appellant filed a Form CA-2a, notice of recurrence of disability. He indicated that his recurrence of symptoms began on April 26, 1997 when, on limited duty, he experienced numbness in the lower spine and legs. Appellant noted that when his back and spine hurt, he tends to lose his balance and stumble. He stopped work on April 27, 1997 and returned on May 7, 1997. Appellant requested compensation benefits from April 27 to May 6, 1997.

In support of his claim for recurrence, appellant submitted several CA-17 forms dated April 28 to June 10, 1997; a physical therapy referral form; progress notes dated May 2 through June 10, 1997; and a report dated June 10, 1997 from Dr. Jeffrey Kraft, an osteopath.

By decision dated July 31, 1997, the Office denied appellant's claim for a recurrence filed May 2, 1997 on the grounds that the evidence submitted was insufficient to support the allegation that appellant was unable to perform his restricted job from March 27 to May 6, 1997.¹

In a decision dated November 13, 1997, the Office modified the July 31, 1997 order to deny compensation benefits for the period April 27 to May 6, 1997 for the reason that the medical evidence failed to establish that the claimant was totally disabled as a result of the March 27, 1997 injury.

In a letter dated July 20, 1998, appellant requested reconsideration of the Office's July 31, 1997 decision. He submitted no additional evidence in support of his request for reconsideration.²

By decision dated October 26, 1998, the Office denied appellant's request for review on the grounds that the evidence submitted was immaterial and not sufficient to warrant review of the prior decision.

The Board finds that the Office properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

The only decision before the Board on this appeal is the October 26, 1998 Office decision which found the evidence submitted in support of appellant's request for reconsideration was insufficient to warrant review of its prior decision. Since the October 26, 1998 Office decision is the only decision issued within one year of the date that appellant filed his appeal with the Board, January 28, 1999, this is the only decision over which the Board has jurisdiction.³

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.⁴ Section 10.138(b)(2) provides that when an application for review of the merits of a

¹ Subsequent to the Office's issuance of the July 31, 1997 decision, appellant submitted a Form CA-17 dated August 9, 1997.

² Appellant's letter for reconsideration dated July 20, 1998 refers to a report from Dr. Kraft dated October 6, 1997. However, the record indicates the actual date of Dr. Kraft's letter was June 10, 1997.

³ See 20 C.F.R. § 501.3(d)(2).

⁴ 20 C.F.R. § 10.138(b)(1).

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.⁵

In this case, appellant has not shown that the Office erroneously applied or interpreted a point of law; he has not advanced a point of law or fact not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. No new and relevant medical evidence accompanied the July 20, 1998 reconsideration request. This is important since the outstanding issue in the case, whether appellant had a recurrence of disability from April 27 through May 6, 1997, is medical in nature. Appellant's reconsideration request only asserted that one of Dr. Kraft's reports⁶ was properly signed by the physician. However, this contention has no reasonable color of validity⁷ as there is no dispute that Dr. Kraft signed the report in question and the Office had previously considered and weighed this report in its November 13, 1997 decision.

Additionally, appellant's July 20, 1998 letter did not otherwise show that 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. For these reasons, the Office properly denied appellant's reconsideration request without conducting a merit review of the record.

The October 26, 1998 Office of Workers' Compensation Programs' decision is affirmed.

Dated, Washington, D.C.
June 19, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ 20 C.F.R. § 10.138(b)(1).

⁷ See *Norman W. Hanson*, 45 ECAB 430 (1994).