

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHARLES E. WADE and U.S. POSTAL SERVICE,  
POST OFFICE, Hannibal, MO

*Docket No. 99-1324; Submitted on the Record;  
Issued June 13, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for a merit review on May 4, 1998.

On September 29, 1990 appellant, then a 53-year-old letter carrier, filed a notice of occupational disease alleging that he sustained degenerative arthritis in the course of his federal employment.

On September 4, 1990 Dr. Andre P. Edmonds, a Board-certified orthopedic surgeon, opined that appellant had degenerative arthritis on his knees and left anterior-cruciate joint arthropathy due to his job. He also noted that appellant had a left shoulder problem stemming from carrying a mailbag. Dr. Edmonds stated that appellant should change jobs.

On April 10, 1991 the Office accepted that appellant sustained a temporary aggravation of degenerative arthritis of the left shoulder and both knees.

On March 9, 1992 the Office awarded appellant a schedule award from January 15, 1992 through December 14, 1995 for a 30 percent permanent impairment of the right lower extremity, for a 29 percent permanent impairment for the left lower extremity and a 11 percent permanent impairment of the left upper extremity.

On February 8, 1996 Dr. Edmonds indicated that appellant remained disabled from his knee, left shoulder and hand problems. He stated that appellant required knee surgery. Appellant subsequently underwent an unapproved total knee replacement on March 27, 1996. On May 2, 1996 Dr. Edmonds opined that appellant's osteoarthritis was a progressive condition and that aggravating factors could further his deterioration.

On September 23, 1996 Dr. Russell Cantrell, a Board-certified orthopedic surgeon, opined that appellant's left shoulder and bilateral knee conditions were not related to his accepted work injuries or his employment.

The Office subsequently found a conflict in the opinions of Drs. Edmond and Cantrell and referred appellant to Dr. James Emanuel, a Board-certified orthopedic surgeon, for a referee opinion. On December 10, 1996 Dr. Emanuel performed a complete and thorough examination. He opined that appellant's work-related temporary aggravations of his shoulder and knees had ceased.

On February 21, 1997 the Office issued a notice of proposed termination of compensation and medical benefits on the basis that the medical evidence established that appellant no longer suffered any residuals casually related to factors of his federal employment. The Office further noted that appellant was not entitled to additional wage-loss compensation for total temporary disability after May 14, 1991. The Office indicated that the weight of the medical evidence rested with the opinions of Drs. Cantrell and Emanuel. Appellant was given 30 days to submit additional evidence and argument.

By decision dated April 25, 1997, the Office finalized its proposed termination of wage-loss compensation and medical benefits and found that appellant was not entitled to medical benefits and wage-loss compensation for total temporary disability after May 14, 1991.

In a letter received June 2, 1997, appellant requested an oral hearing or a review of the written record.

By decision dated September 22, 1997, the Office denied appellant's request for a hearing because it was not received within 30 days of the April 25, 1997 decision. The Office further denied appellant's request for the reason that the issue involved could be equally resolved on reconsideration.

On February 20, 1998 appellant requested reconsideration. In his letter, he argued that the Office was predetermined to terminate his compensation. He stated that he continued to suffer orthopedic residuals related to his employment injury and that he was permanently and totally disabled from these residuals. He urged that the opinions of Drs. Cantrell and Emanuel should not carry the weight of the medical evidence as neither performed a thorough examination.

In support of his request for reconsideration, appellant resubmitted Dr. Edmonds September 4, 1990 and February 8, 1996 reports. Appellant also submitted an October 15, 1990 letter, from Dr. Edmonds stating that the arthritic changes in appellant's right knee were secondary to his work. He submitted a brief note from Dr. James A. Gwaltney, a Board-certified orthopedic surgeon, indicating only that he assisted in appellant's knee surgery. He also submitted a February 6, 1998 report from Dr. Ben Lee Jolly, a Board-certified orthopedic surgeon, who reviewed appellant's history of knee injuries and stated that eventually appellant would need a total left knee replacement. In addition, appellant submitted various correspondence from the Office to him and his Congressmen. Finally, appellant submitted copies of portions of a medical book.

By decision dated May 4, 1998, the Office refused to reopen appellant's claim for a merit review because he failed to submit new and relevant evidence.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for merit review on May 14, 1998.

Under section 8128(a) of the Federal Employees' Compensation Act,<sup>1</sup> the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.138(b)(1) of the implementing federal regulations,<sup>2</sup> which provides that a claimant may obtain review of the merits of the claim by:

“(i) Showing that the Office erroneously applied or interpreted a point of law; or

“(ii) Advancing a point of law or a fact not previously considered by the Office;  
or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.<sup>3</sup>

In the instant case, appellant's benefits were terminated and his claim for compensation denied because the medical evidence established that he no longer suffered any disability causally related to his accepted employment injuries. Because this case involves a medical issue, appellant's statement providing his lay opinion of the evidence and the correspondence he submitted from the Office, are not relevant to the medical issue at hand. Moreover, the September 4, 1990 and February 6, 1996 opinions of Dr. Edmonds, a Board-certified orthopedic surgeon, were previously submitted and are, therefore, cumulative and insufficient to warrant a merit review. Furthermore, Dr. Edmonds' October 15, 1990 report is also insufficient to warrant a merit review because it is not relevant in determining whether appellant's present condition stems from his employment injury and it merely repeats the conclusions made in his other reports of record. In addition, neither Dr. Gwaltney's March 14, 1996 statement nor Dr. Lee's February 6, 1998 report address whether appellant continues to suffer residuals from his accepted employment injuries. Consequently, this evidence is irrelevant and insufficient to reopen the case. Finally, the portions of medical text appellant submitted are irrelevant inasmuch as textual evidence has little value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the text to the specific issue of the case.<sup>4</sup> Therefore, this evidence is insufficient to require the Office to reopen appellant's claim for review of the merits.

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<sup>1</sup> 5 U.S.C. § 8128(a).

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

<sup>3</sup> 20 C.F.R. § 10.138(b)(2).

<sup>4</sup> *Ruby I. Fish*, 46 ECAB 276 (1994).

As appellant failed to submit any new relevant and pertinent evidence, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

The decision of the Office of Workers' Compensation Programs dated May 4, 1998 is hereby affirmed.

Dated, Washington, D.C.  
June 13, 2000

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member