

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RHONDA L. MOODY and U.S. POSTAL SERVICE,  
POST OFFICE, Asheboro, NC

*Docket No. 98-2234; Submitted on the Record;  
Issued March 24, 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 pursuant to 5 U.S.C. § 8128.

On November 4, 1994 appellant, then a 36-year-old rural carrier associate, filed a notice of traumatic injury, alleging that she strained her back and left shoulder on October 29, 1994 when her car spun out of control on a gravel road in the course of her federal employment. On January 24, 1995 the Office accepted the claim for a cervical strain.

On October 12 and December 2, 1996 appellant filed notices of recurrence of disability.

By decision dated January 16, 1997, the Office denied appellant's claims for a recurrence of disability because the evidence of file failed to demonstrate a causal relationship between the injury and the claimed condition or disability.

On January 15, 1998 appellant's representative requested reconsideration.

In support of the request for reconsideration, appellant submitted a January 7, 1997 report from Dr. Timothy B. Decker, an osteopath, diagnosing chronic low back pain and an October 24, 1997 report from Dr. Decker diagnosing failed low back syndrome. Dr. Decker did not address appellant's accepted injury of a cervical strain in either report.

By decision dated April 20, 1998, the Office denied appellant's request for reconsideration on the basis that appellant neither raised substantive legal questions nor submitted new and relevant evidence.

The Board finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

The only decision before the Board on this appeal is the Office's April 20, 1998 decision finding that the evidence submitted in support of appellant's request for reconsideration was not sufficient to warrant review of its prior decision. Since more than one year has elapsed between the date of the Office's most recent merit decision on January 16, 1997 and the filing of appellant's appeal on July 20, 1998, the Board lacks jurisdiction to review the merits of appellant's claim.<sup>1</sup>

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and the specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

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

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

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”<sup>2</sup>

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> 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.<sup>4</sup> Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.<sup>5</sup>

Appellant's representative made no arguments regarding the denial of appellant's claim for a recurrence of disability. Moreover, the only medical evidence submitted by appellant following the January 16, 1997 denial of her claim failed to address whether appellant sustained a recurrence of her accepted condition, a cervical strain. Instead, the reports of Dr. Decker, an osteopath, only addressed appellant's low back pain and failed low back syndrome. Appellant, therefore, submitted no relevant evidence in support of her claims for a recurrence of disability.

As appellant has not established that the Office erroneously applied or interpreted a point of law, advanced a point of law or fact not previously considered by the Office or submitted relevant and pertinent evidence not previously considered by the Office, she has not established

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<sup>1</sup> 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed.

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

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

<sup>4</sup> *Daniel Deparini*, 44 ECAB 657 (1993).

<sup>5</sup> *Id.*

that the Office abused its discretion in denying her request for review under section 8128 of the Act.

The decision of the Office of Workers' Compensation Programs dated April 20, 1998 is hereby affirmed.

Dated, Washington, D.C.  
March 24, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member