

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANICE L. PIERCE (DANIELS) and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 98-1379; Submitted on the Record;
Issued May 23, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs' refusal to reopen the record pursuant to section 8128 of the Federal Employees' Compensation Act constituted an abuse of discretion.

In this case, the Office accepted that on September 8, 1978, appellant, then a 24-year-old clerk, sustained a contusion to her right shoulder, contusion to the right side of the head and minor post-traumatic headache syndrome in connection with her federal employment. On February 4, 1991 appellant filed for a recurrence of disability on and after February 1990 alleging that she still suffers from headaches from the original injury.

By decision dated April 26, 1991, the Office denied the claim on the grounds that the medical evidence of file failed to establish a causal relationship between the accepted injury and the claimed recurrence of disability. Appellant's request for reconsideration was denied in an August 1, 1991 nonmerit decision.

By decision dated October 15, 1991, the Office's Branch of Hearings and Review found that appellant was not entitled to a hearing as her request was untimely. The Office, however, found that the issue in this case could be equally well addressed by requesting reconsideration from the district office and submitting additional medical evidence not previously considered which established that the claimed condition was causally related to the September 8, 1978 work injury.

Appellant requested reconsideration several times and submitted additional medical evidence with each request. By decisions dated January 3, 1992, March 4, 1993, June 8, 1994, May 1, 1995 and May 28, 1996, the Office undertook a merit review of the evidence and determined that the evidence was not sufficient to warrant modification of its prior decisions. In the May 1, 1995 and May 28, 1996 decisions, the Office reviewed medical reports submitted

from Dr. Mark Michaud, a Board-certified family practitioner, who noted appellant suffered from chronic migraines which he attributed to stress at work.

In a May 28, 1997 letter, which the Office received on May 28, 1997, appellant again requested reconsideration. In her narrative report, she noted the procedural history of her claim and reiterated the fact that her job duties had changed and that her condition is caused and aggravated by her employment.

In a May 29, 1997 report, Dr. Michaud noted that he did not become appellant's physician until 1990 and could not comment on her injury of September 8, 1978. He stated that there was no one test which could prove that job stress was causing appellant's headaches to be more frequent. Dr. Michaud stated that he believed that headaches are made worse by job stressors. He noted that since appellant moved to the Roseland office in April 1994, he only saw appellant twice for headaches while in the period of April 1991 through April 1994, he saw appellant over ten times.

In a January 9, 1998 decision, the Office denied appellant's request for reconsideration on the grounds that she neither raised substantive legal questions nor included new and relevant evidence. The Office further noted that appellant's initial request for reconsideration was erroneously overlooked, but that no penalty for an untimely filing was imposed. It was noted that the report of Dr. Michaud did not include new medical opinion evidence.

The only decision on appeal before the Board is the January 9, 1998 decision denying appellant's request for reconsideration. The Board has no jurisdiction to review any prior decisions because they were issued more than one year before the current appeal which was filed on March 7, 1998.¹

The Board finds that the Office properly denied appellant's request for reconsideration.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. 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 requirements, the Office will deny the application for review without reviewing the merits of the claim.² 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.³ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁴

¹ 20 C.F.R. § 501.3(d)(2).

² 20 C.F.R. § 10.138(b)(2).

³ *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

⁴ *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

The Board notes that the issue in this case is whether appellant's current condition is related to her 1978 employment injury. Although appellant continued to assert that she still suffers from the effects of her September 8, 1978 work injury, her statement is a reargument of points previously considered and addressed by the Office. Furthermore, Dr. Michaud's May 29, 1997 report is repetitious of his previous reports. As Dr. Michaud failed to offer an opinion pertaining to the causal relationship between appellant's September 8, 1978 diagnosed conditions and the headaches appellant suffered from April 1991 onward, the Office properly found that this evidence was not probative to the issue in this case and was insufficient to warrant merit review. The Board notes that the record contains several reports from Dr. Michaud in which he also fails to adequately address the causal relation between appellant's claimed recurrence and her work injury.

As appellant's reconsideration request did not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying the request.

The decision of the Office of Workers' Compensation Programs dated January 9, 1998 is affirmed.

Dated, Washington, D.C.
May 23, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member