

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK J. MUSMACKER and U.S. POSTAL SERVICE,
POST OFFICE, Central Islip, NY

*Docket No. 99-762; Submitted on the Record;
Issued November 16, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for further review on the merits under 5 U.S.C. § 8128(a).

This is the second time this case has been on appeal to the Board. In a decision dated July 27, 1997, the Board found that the Office properly terminated appellant's wage-loss benefits, effective July 3, 1994,¹ on the grounds that he was no longer disabled from work due to his employment-related neck and right shoulder conditions.² The Board relied on the referee medical opinion of Dr. Edmund A.C. Stewart, a Board-certified orthopedic surgeon, who concluded in a September 21, 1993 report that appellant's disability from work ceased on April 13, 1989. In addition, based on Dr. Stewart's recommendation for psychological counseling, the Office referred appellant to Dr. Robert Derman, a Board-certified psychiatrist, who examined appellant on February 22, 1994 and found no psychiatric or psychological impairment.

By letter dated July 1, 1998, appellant requested reconsideration. The only new medical evidence appellant submitted with his request consisted of reports dated July 12, 1995 and May 14, 1997 from Dr. Donald Holzer, a Board-certified neurologist, who noted complaints of pain in the cervical spine and indicated that appellant was permanently and totally disabled due to his condition.

¹ Docket No. 95-1949 (issued July 27, 1997). The Board affirmed Office decisions dated April 3 and January 6, 1995 and July 29, 1994.

² Appellant, a 45-year-old letter carrier, injured his right shoulder while lifting a mailbag on April 3, 1989. He filed a claim for benefits, which the Office accepted for a sprain of the neck and right shoulder.

By decision dated October 2, 1998, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law; by advancing a point of law or fact not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.³ 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.⁴ Evidence that repeats or duplicates evidence already in the record has no evidentiary value and does not constitute a basis for reopening a 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. Dr. Holzer's July 12, 1995 and May 14, 1997 reports are cumulative and repetitive of previous reports because they merely state summarily that appellant's cervical condition was permanently and totally disabling. Dr. Holzer's reports, therefore, do not contain any relevant and pertinent new evidence for the Office to review.

All the other medical evidence submitted by appellant was previously of record and considered by the Office in reaching prior decisions. Thus, his request did not contain any new and relevant medical evidence for the Office to review. Additionally, appellant's July 1, 1998 letter did not show 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. Although appellant generally contended that he continued to experience residuals from his April 3, 1989 employment injury, he failed to submit relevant and pertinent new medical evidence in support of this contention. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

³ 20 C.F.R. § 10.138(b)(1). *See generally* 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Howard A. Williams*, 45 ECAB 853 (1994).

The October 2, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 16, 2000

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member