

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT J. CARTWRIGHT and DEPARTMENT OF THE ARMY,  
WEST POINT MILITARY ACADEMY, West Point, NY

*Docket No. 99-188; Submitted on the Record;  
Issued October 27, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
VALERIE D. EVANS-HARRELL

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

On March 18, 1993 appellant, a 60-year-old computer programmer, injured his lower back when he slipped while walking on an unplowed, icy parking lot surface. The Office accepted the claim for temporary aggravation of preexisting lumbosacral sprain. He was eventually placed on the periodic rolls. Appellant returned to work in a modified job as a computer specialist, at 20 hours per week on January 10, 1996.

On August 26, 1996 appellant filed a Form CA-2a claim for recurrence of disability, alleging that on July 15, 1996 he began experiencing lower back pain caused or aggravated by his accepted March 18, 1993 employment injury.

By decision dated October 28, 1996, the Office denied appellant's claim for recurrence of disability.

By letter dated November 19, 1996, appellant's attorney requested an oral hearing.

By decision dated March 8, 1997, an Office hearing representative determined that the case was not in posture for a hearing, but found based on a review of the written record that appellant had submitted sufficient medical evidence to warrant further development of the evidence. The hearing representative therefore vacated the Office's October 28, 1996 decision and remanded the case to the district office for referral to a second opinion physician and a *de novo* decision.

Appellant was referred to Dr. Neil S. Rosenthal, Board-certified in psychiatry and neurology and internal medicine. In report dated May 1, 1997, he, after reviewing appellant's medical records, the statement of accepted facts and stating findings on examination, indicated

that he found no objective evidence supporting appellant's subjective claims of pain and advised that the neurological examination did not reveal any motor deficits or reflex changes in the lower extremities. He concluded that, although appellant may have suffered some degree of lumbosacral sprain resulting from the March 18, 1993 employment injury, there was no objective evidence supporting appellant's claim of disability, nor any need for further neurological treatment or surgery due to the accepted 1993 injury.

By decision dated May 29, 1997, the Office denied appellant's claim for recurrence of disability.

By letter dated May 6, 1998, appellant's attorney requested reconsideration. In support of his claim, appellant submitted a December 4, 1997 report from Dr. Leon Sultan, a Board-certified orthopedic surgeon and reports dated January 11, June 9 and November 6, 1997 from Dr. Stanley M. Mandell, Board-certified in psychiatry and neurology. Dr. Sultan opined that appellant had a marked lower back disability secondary to lumbar disc disease, resulting in motor restriction and chronic pain secondary to arachnoiditis. He stated:

"I believe that the fall of [March 18, 1993] triggered off additional problems in the lower back resulting in spinal instability as well as weakness in the right lower extremity.... His overall condition is permanent and causally related to the accident of March 18, 1993 and with ongoing chronic lower back symptoms as described above, he is not capable of resuming full unrestricted work activity as a computer programmer."

Dr. Mandell, appellant's treating physician, noted appellant's history of lower back pain, stated findings on examination and, in his November 6, 1997 report, advised that appellant continued to have severe pain.

By decision dated July 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 such that it was 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 his 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.<sup>1</sup> 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

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<sup>1</sup> 20 C.F.R. § 10.138(b)(1). *See generally* 5 U.S.C. § 8128(a).

claim.<sup>2</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>3</sup>

In the present 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. Sultan's December 4, 1997 report is not relevant and pertinent because it does not contain a rationalized, probative medical opinion as to whether appellant's current condition was caused or aggravated by his 1993 accepted lumbosacral sprain. Dr. Mandell's reports are cumulative and repetitive because they essentially reiterate previous reports which indicated that appellant had chronic lower back pain, without providing an opinion as to whether his lower back symptoms were causally related to his accepted March 18, 1993 employment injury. Thus, appellant's request did not contain any new and relevant medical evidence for the Office to review. This is important since the outstanding issue in the case -- whether appellant sustained a recurrence of his accepted March 18, 1993 employment injury on July 15, 1996 -- was medical in nature. All the other medical evidence submitted by appellant was previously of record and considered by the Office in reaching prior decisions.

Additionally, the May 6, 1998 letter from appellant's attorney 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 sustained a recurrence of his work-related disability on July 15, 1996, he failed to submit new and relevant 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. The Board therefore affirms the Office's July 2, 1998 decision.

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

<sup>3</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

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

Dated, Washington, DC  
October 27, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Valerie D. Evans-Harrell  
Alternate Member