

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of JAMES L. MOORE and DEPARTMENT OF LABOR,  
ESA/CLEVELAND DO, Chicago, IL

*Docket No. 99-704; Submitted on the Record;  
Issued October 20, 2000*

---

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
PRISCILLA ANNE SCHWAB

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

The Board has duly reviewed the case record and finds that the refusal of the Office to reopen appellant's case for further review did not constitute an abuse of discretion.

On April 13, 1993 appellant filed a traumatic injury claim alleging that on April 9, 1993 he sustained injury to his neck, both knees and right leg when he was rear-ended while stopped at a traffic light. On September 15, 1993 the Office accepted appellant's claim for cervical strain and bilateral knee contusions.<sup>1</sup>

On September 12, 1994 appellant filed a claim for a recurrence of disability causally related to his April 9, 1993 cervical strain. By decision dated September 28, 1995, the Office denied appellant's recurrence claim finding that the evidence of record failed to establish that the claimed recurrence was causally related to the accepted April 9, 1993 cervical strain.

Appellant retained an attorney, who, by letter dated October 18, 1995, requested a hearing before a hearing representative. A hearing was scheduled and held on March 19, 1996. By decision dated June 27, 1996, the hearing representative set aside the Office's September 28, 1995 decision and remanded the case for further development of the evidence.

Appellant was referred to Dr. Malcolm A. Brahms, a Board-certified orthopedic surgeon, who in a September 6, 1996 report opined, after examining appellant on August 26, 1996, that

---

<sup>1</sup> By decision dated June 10, 1993, the Office originally denied appellant's claim on the grounds that the evidence of record failed to establish that an injury resulted from the incident. By letter received on July 16, 1993, appellant requested reconsideration of the June 10, 1993 decision.

appellant's current condition was not causally related to his accepted April 9, 1993 cervical strain. In a supplemental November 4, 1996 report, Dr. Brahms stated that the soft tissue injury to appellant's lower back on April 9, 1993 would have resolved in 8 to 12 weeks to further support his opinion.

By decision dated November 13, 1996, the Office denied appellant's claim finding that the evidence of record failed to establish that the claimed recurrence of disability was causally related to the accepted April 9, 1993 injuries. The condition of lumbar strain was determined to have resolved prior to August 8, 1994.

By letter dated November 25, 1996, appellant's representative requested a hearing before an Office hearing representative, which was held on May 20, 1997. By decision dated August 14, 1997, the hearing representative affirmed the Office's November 13, 1996 decision. By letter dated August 14, 1998, appellant's representative requested reconsideration of the August 14, 1997 decision. By decision dated November 18, 1998, the Office denied review of the prior decision.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>2</sup> Because more than one year has elapsed between the issuance of the Office's August 14, 1997 decision and December 29, 1998, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the August 14, 1997 decision and any preceding decisions. Therefore, the only decision before the Board is the Office's November 18, 1998 nonmerit decision denying appellant's request for a review of its August 14, 1997 decision.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.<sup>3</sup> When a claimant fails to meet at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.<sup>4</sup>

In support of the August 14, 1998 request for reconsideration, appellant's representative submitted an August 25, 1997 report by Dr. Atul Goswami, an internist, who restated the opinion he previously gave in a March 18, 1996 report that appellant's back and knee pain/conditions dating back to 1994 were causally related to appellant's accepted April 9, 1993 injuries. Dr. Goswami's report is cumulative in nature and thus insufficient to warrant review of the prior decision.

---

<sup>2</sup> *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>3</sup> 20 C.F.R. § 10.138(b)(1). *See generally* 5 U.S.C. § 8128.

<sup>4</sup> 20 C.F.R. § 10.138(b)(2).

As appellant's August 14, 1998 request for reconsideration 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 that request.

The decision of the Office of Workers' Compensation Programs dated November 18, 1998 is affirmed.

Dated, Washington, DC  
October 20, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member