

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ISHMAIL A. NURID-DEEN and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 99-1375; Submitted on the Record;
Issued April 16, 2001*

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 refused to reopen appellant's case for further review of the merits of his claim.

On March 15, 1989 appellant, then a 32-year-old temporary supervisor, filed a claim for an injury to his back, head and both knees sustained on that date in an automobile accident. He stopped work on March 15, 1989 and returned to limited-duty work on May 12, 1989 and the Office determined that he was entitled to continuation of pay during this period. Appellant filed claims for recurrences of disability from May 22 to 24, 1989 and from June 16 to 20, 1989. On August 22, 1989 he filed another claim for a recurrence of disability beginning August 21, 1989. The Office accepted that appellant sustained a cervical spine strain, a lumbosacral strain, contusions of both knees and also accepted appellant's claims for recurrences of disability and began payment of compensation for temporary total disability on August 21, 1989. The Office later accepted that appellant's March 15, 1989 employment injury also resulted in a dysthymic disorder.

On June 23, 1997 the Office issued a notice of proposed reduction of compensation on the basis that appellant had the capacity to earn wages as a mail clerk. By decision dated July 31, 1997, the Office reduced appellant's compensation effective August 16, 1997 based on his capacity to earn wages as a mail clerk. Appellant requested reconsideration and submitted additional evidence. By decision dated November 14, 1997, the Office found that the additional evidence was not sufficient to warrant modification of its prior decision.

By letter dated November 12, 1998, appellant again requested reconsideration, contending that the physicians who examined him for the Office did not state he could work as a mail clerk or were biased against him, and that the evidence did not establish that he was vocationally capable of performing the position of mail clerk. He submitted additional evidence, including medical reports from his attending physicians. By decision dated February 2, 1999, the Office found that appellant did not submit any additional relevant evidence or legal argument, and that his request for reconsideration was not sufficient to warrant review of its prior decisions.

The only Office decision before the Board on this appeal is the Office's February 2, 1999 decision finding that appellant's application for review was not sufficient to warrant review of its prior decision. Since more than one year elapsed between the date of the Office's most recent merit decision on November 14, 1997 and the filing of appellant's appeal on March 19, 1999, the Board lacks jurisdiction to review the merits of appellant's claim.¹

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606(b), 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 relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. Section 10.608(b) 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. 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.² Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.³

Appellant's interpretation of the medical and vocational evidence and his allegations of bias do not constitute legal arguments and do not show that the Office erroneously applied or interpreted a point of law. Much of the evidence appellant submitted consisted of duplicates of documents already in the case record, and none of the new evidence appellant submitted with his request for reconsideration is relevant to the issue of whether the Office properly reduced appellant's compensation effective August 16, 1997. The reports of Dr. Robert A. Cimino, Jr., a chiropractor, do not constitute competent medical evidence because Dr. Cimino did not diagnose a subluxation as demonstrated by x-ray to exist.⁴ These reports also do not address appellant's

¹ 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 final decision being appealed.

² *Eugene F. Butler*, 36 ECAB 393 (1984).

³ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁴ 5 U.S.C. § 8101(2) states: “The term ‘physician’ includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist....” Interpreting this section of the Act, the Board has concluded that the reports of a chiropractor have no probative value unless it is established that there is a subluxation as demonstrated by x-ray. *Kathryn Haggerty*, 45 ECAB 383 (1994).

ability to work. A functional capacities evaluation done on January 14, 1998 also does not constitute competent medical evidence, as it was prepared by a physical therapist, who is not a “physician” as defined by the Act.⁵ An August 13, 1997 report from Dr. C. Choi stating that appellant was hospitalized from August 4 to 13, 1997 “due to work-related stress and depression which caused relapse of post-traumatic stress disorder and substance abuse” does not indicate that appellant could not perform the duties of a mail clerk beginning August 16, 1997. The reports of Dr. Richard H. Kaplan, appellant’s attending physiatrist, were either repetitious of the reports previously submitted by this physician or indicated that appellant was able to work. Reports from Dr. Edwin Nii Adom, appellant’s attending psychiatrist, dated February 26 and May 11, 1998 indicate that appellant can return to full-time work. A report from Dr. Ira Brenner dated May 4, 1998 also indicates that appellant can return to work. The evidence indicating that appellant returned to work on May 19, 1998 at his former position of laborer/custodian and Dr. Kaplan’s November 4, 1998 evaluation of the permanent impairment of appellant’s legs are not relevant to the issue of whether appellant was able to perform the duties of a mail clerk beginning August 16, 1997. Appellant has not submitted any evidence relevant to this issue and the Office therefore properly refused to reopen his case for further review of the merits of his claim.

The decision of the Office of Workers’ Compensation Programs dated February 2, 1999 is affirmed.

Dated, Washington, DC
April 16, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁵ 5 U.S.C. § 8101(2) defines “physician” to include “surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law.” Interpreting this section, the Board has found that the reports of physical therapists do not constitute competent medical evidence. *Barbara J. Williams*, 40 ECAB 649 (1989).