

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANICE F. WATKINS and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

*Docket No. 00-2500; Submitted on the Record;
Issued August 20, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for review of the merits pursuant to 5 U.S.C. § 8128.

The Board has duly reviewed the case record and finds that the Office did not abuse its discretion by refusing to reopen appellant's case for review of the merits pursuant to 5 U.S.C. § 8128.

On August 2, 1994 appellant, then a 32-year-old city carrier, filed a traumatic injury claim alleging on that date she strained her back and shoulders and experienced pain in her neck. Appellant stated that during the course of the day: she loaded and delivered the route; carried bundles of flyers; and the vehicle she used caused her difficulty in opening and closing both the driver and back doors.

By letter dated January 15, 1999, the Office accepted appellant's claim for cervical/thoracic strains. Subsequently, the Office expanded the acceptance of appellant's claim to include consequential adjustment disorder.

On March 4, 1998 appellant filed a claim for continuing compensation on account of disability for wage loss during the period June 7, 1997 through February 3, 1998. Appellant submitted medical evidence indicating that she had a bulging cervical disc caused by her August 2, 1994 employment injury.¹

By decision dated May 7, 1998, the Office found the evidence of record insufficient to establish that appellant was disabled for work during the period June 7, 1997 through

¹ Prior to appellant's March 4, 1998 claim, she filed a claim for continuing compensation on account of disability for wage loss during the period April 23 through June 6, 1997, which was accepted by the Office on December 5, 1997.

February 3, 1998. In another decision of the same date, the Office found the evidence of record insufficient to establish that the claimed condition was caused by appellant's August 2, 1994 employment injury. In a June 1, 1998 letter, appellant requested an oral hearing regarding the Office's decisions. Subsequently, in a November 20, 1998 letter, appellant requested a review of the written record rather than an oral hearing.

In a February 16, 1999 decision, the hearing representative reversed the Office's decision finding that appellant was not entitled to compensation during the period June 7, 1997 through February 3, 1998, but affirmed the Office's decision finding that the claimed condition was not caused by appellant's August 2, 1994 employment injury. In a February 7, 2000 letter, appellant requested reconsideration of the Office's decision accompanied by medical evidence.

By decision dated April 13, 2000, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that appellant submitted evidence that was irrelevant and cumulative, and thus, it was insufficient to warrant 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.² As appellant filed her request for appeal on August 11, 2000, the only decision before the Board is the April 13, 2000 decision denying appellant's request for reconsideration on the merits.³

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁴ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.⁵ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.⁶ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁷

In support of her request for reconsideration, appellant submitted a January 7, 2000 report of Dr. Edward N. Feldman, an orthopedic surgeon, finding that she had job-related stress

² 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

³ Because more than one year has elapsed between the issuance of the Office's February 16, 1999 merit decision and August 11, 2000, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the February 16, 1999 decision. *See* 20 C.F.R. § 501.3(d)(2).

⁴ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(1)-(2).

⁶ *Id.* at § 10.607(a).

⁷ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

disorder, bulging cervical disc at C5-C6, C6-C7 and C4-C5, greater occipital neuralgia, chronic thoracic sprain, chronic cervical sprain, chronic lumbosacral sprain and right carpal tunnel syndrome. Dr. Feldman stated that the objective findings and subjective complaints were causally related to the work-related accident of August 2, 1994 and were permanent. He opined that as a physician relating cause and effect and not having magnetic resonance imaging prior to the August 2, 1994 work-related accident, he could state with a reasonable medical degree of certainty that appellant's bulging discs were due to her work-related accident. Dr. Feldman's findings and opinion regarding the cause of appellant's bulging discs are essentially the same as those expressed in his previous reports of record, which were already considered by the Office. As this evidence provided no new evidence, and is repetitive and cumulative, it has no probative value.

Because appellant has failed to submit any new relevant and pertinent evidence not previously reviewed by the Office, and further failed to raise any substantive legal questions, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

The April 13, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 20, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member