

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES W. JOHNSON and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Norcross, GA

*Docket No. 00-329; Submitted on the Record;
Issued January 19, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, 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 May 31, 1994 appellant, then a 38-year-old lead clerk, filed an occupational disease claim, alleging that he sustained a lower back condition which resulted from repetitive work activities.

By decision dated August 5, 1994, the Office denied the claim, finding that he failed to establish that he sustained the alleged back condition in the performance of duty.

By letter dated August 16, 1994, appellant's representative requested an oral hearing.

By decision dated October 21, 1994, an Office hearing representative, based on a review of the written record, vacated the previous decision and remanded the case for further development of the evidence.

By decision dated November 23, 1994, the Office denied the claim, finding that appellant failed to establish that the claimed condition or disability was causally related to his employment.

By letter dated December 20, 1994, appellant's representative requested a review of the written record. By decision dated April 17, 1995, a second Office hearing representative, based on a review of the written record, vacated the previous decision and remanded the case for further development of the evidence.

By decision dated July 21, 1995, the Office denied the claim, finding that appellant failed to establish that the claimed condition or disability was causally related to his employment.

By letter dated August 11, 1995, appellant's representative requested a review of the written record. By decision dated October 30, 1995, finalized October 31, 1995, a third Office

hearing representative, based on a review of the written record, vacated the previous decision and remanded the case for further development of the evidence.

By decision dated March 7, 1996, the Office accepted the claim for lumbar strain, but also found that the condition resolved by August 20, 1994, and that therefore appellant was not entitled to further compensation beyond that date.

By letter dated April 2, 1996, appellant's representative requested a review of the written record. By decision dated October 29, 1996, a fourth Office hearing representative, based on a review of the written record, vacated the previous decision and remanded the case for further development of the evidence.

By decision dated March 21, 1997, the Office denied the claim, finding that appellant failed to establish that the claimed condition or disability was causally related to his employment beyond August 20, 1994.

By letter dated March 28, 1997, appellant's representative requested an oral hearing, which was held on November 4, 1997. By decision dated February 13, 1998, a fifth Office hearing representative vacated the previous decision and, finding a conflict in the medical evidence, referred appellant for an impartial medical examination to determine whether his current condition was causally related to his employment.

Appellant was examined by Dr. Jayendrakumar J. Shah, a Board-certified orthopedic surgeon, who examined appellant, reviewed the medical records and statement of accepted facts and had a magnetic resonance imaging (MRI) scan and electromyogram (EMG) performed. Dr. Shah advised that the MRI indicated only evidence of prior surgery with no new disc herniation, slight scarring and no spinal stenosis. The findings were similar to a June 4, 1994 MRI. He further stated that the EMG revealed some radiculopathy of the right L5-S1 nerve root with some peroneal nerve problems in both legs. Based on his examination, a review of the medical records and his test results, Dr. Shah concluded that there was no component in appellant's condition attributable to his work-related injury in May 1994. He indicated that appellant's current symptoms were due to his prior surgery and aging, rather than the employment injury.

By decision dated June 9, 1998, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that his claimed current condition was causally related to factors of his federal employment. The Office, relying on Dr. Shah's impartial medical opinion, found that appellant's lumbar strain had resolved as of August 20, 1994.

By letter dated June 4, 1999, appellant's representative requested reconsideration. Appellant did not submit any new medical evidence with his request, only medical evidence previously of record and previously considered by the Office in adjudicating its prior decisions.

By decision dated June 30, 1999, 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 his claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.607, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific 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.¹ 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

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. Thus, his request did not contain any new and relevant medical evidence for the Office to review. All the medical evidence submitted by appellant was previously of record and considered by the Office in reaching prior decisions. Additionally, the June 4, 1999 letter from appellant's representative failed to show that 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 his claimed current condition was causally related to his employment, 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 June 30, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
January 19, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

¹ 20 C.F.R. § 10.607(b)(1). *See generally* 5 U.S.C. § 8128(a).

² *Howard A. Williams*, 45 ECAB 853 (1994).