

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARREL CLARK and U.S. POSTAL SERVICE,
POST OFFICE, Baltimore, MD

*Docket No. 00-2344; Submitted on the Record;
Issued July 26, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant sustained a January 20, 1996 recurrence of disability causally related to the accepted work injuries of August 25, 1989 and/or April 9, 1990 and whether appellant's preexisting cervical spondylosis is causally related to these injuries; and (2) whether the Office of Workers' Compensation Programs abused its discretion in its July 10, 2000 decision by denying merit review of appellant's claim.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the September 15, 1999 decision of the Office's hearing representative is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

The Board also finds that the Office properly denied merit review in its July 10, 2000 decision. On September 29, 1999 appellant, through counsel, requested reconsideration and advanced several legal arguments. In its decision dated July 10, 2000, the Office denied appellant's request, finding the September 29, 1999 letter and accompanying medical evidence did not include new and relevant evidence or new legal arguments and therefore was insufficient to warrant merit review.

Pursuant to 20 C.F.R. § 10.138(b)(1) in effect on June 5, 1998 and 20 C.F.R. § 10.606 in effect on January 6, 1999, 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 new evidence not previously considered by the Office.¹ Formerly at section 10.138(b)(2), section 10.608(a) 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

¹ 20 C.F.R. § 10.606(b)(2) (1999). *See generally* 5 U.S.C. § 8128(a).

for review without reviewing the merits of the claim.² 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.³ Evidence that does not address the particular issue involved does not constitute a basis for reopening the case.⁴

In the present case, appellant's claim was denied on the basis that the weight of the medical evidence, as represented by the impartial medical specialist, Dr. Berner, established that no causal relationship existed between appellant's preexisting cervical spondylosis as being caused by the accepted work injuries of August 25, 1989 and/or April 9, 1990 or that the accepted work injuries permanently aggravated appellant's preexisting condition. Additionally, the weight of the medical evidence established no causal relationship between appellant's disability of January 20, 1996 and the accepted work injuries. In the September 29, 1999 letter requesting reconsideration, appellant's attorney argued that appellant's January 20, 1996 claim was denied due to his failure to submit his claim on the proper form, citing FECA Bulletin 96-10. Contrary to appellant's contention, the claim was adjudicated and denied on the basis that no causal relationship was established between appellant's preexisting cervical spondylosis or his disability as of January 20, 1996 and the accepted work injuries. Additionally, the weight of the medical evidence of record established that there was no permanent aggravation of appellant's preexisting condition. Thus, appellant's contention that the claim was denied on the basis of a "technical error" is irrelevant and is not germane to the issue at hand. The remainder of the arguments advanced in the September 29, 1999 letter reiterated the arguments presented to the Branch of Hearings and Review and discussed in its decision of September 15, 1999. Therefore, these arguments were repetitious of those already advanced and considered.

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error or clearly unreasonable exercise of judgment.⁵ Accordingly, as appellant's September 29, 1999 reconsideration request was properly found lacking in new and relevant evidence or new legal arguments pertinent to the issue in this case, it therefore is insufficient to warrant modification.⁶ The Board finds that the Office properly denied appellant's application for reconsideration of his claim.⁷

² 20 C.F.R. § 10.608(a) (1999).

³ *Howard A. Williams*, 45 ECAB 853 (1994).

⁴ *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Edward Mathew Diekemper*, 31 ECAB 224, 225 (1979).

⁵ *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁶ 20 C.F.R. § 8128(a)(3).

⁷ The Board further notes that appellant's attorney advanced the same legal arguments in his July 13, 2000 brief before the Board.

The decisions of the Office of Workers' Compensation Programs dated July 10, 2000 and September 15, 1999 are hereby affirmed.

Dated, Washington, DC
July 26, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member