

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY M. MABRY and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Chicago, IL

*Docket No. 00-1450; Submitted on the Record;
Issued June 19, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

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 January 10, 1989 appellant, then a 42-year-old custodian, filed a claim for an injury sustained on January 9, 1989 when he tripped and fell onto his back. The Office accepted that appellant sustained a cervical spine strain, a lumbar spine strain and a bulging disc at L4-5. The Office also accepted that appellant sustained recurrences of disability related to his January 9, 1989 injury, including one from October 7, 1991 through April 24, 1992. Appellant returned to limited duty on April 27, 1992.

On March 4, 1993 appellant filed a claim for a recurrence of disability from February 10 through 16, 1993 related to his January 9, 1989 employment injury. On April 13, 1993 appellant filed a claim for a recurrence of disability from March 2 through April 12, 1993 related to his January 9, 1989 employment injury. On April 27, 1993 appellant filed a claim for a recurrence of disability on February 4, 1993, on which he did not indicate when he returned to work. The employing establishment reported that appellant stopped work on February 16, 1993 and returned to work on April 27, 1993.

By decision dated February 23, 1994, the Office found that appellant had not established that he sustained recurrences of total disability on February 3 or March 2, 1993 related to his January 9, 1989 employment injury. By letter dated December 1, 1994, appellant requested reconsideration and submitted additional medical evidence from his attending physician, Dr. Mary T. Norek. By decision dated August 7, 1995, the Office found that the additional evidence was not sufficient to modify its prior decision. The Office then further developed the medical evidence and by decision dated December 20, 1995, found that the additional evidence was not sufficient to modify its prior decisions.

By letter dated December 18, 1996, appellant requested reconsideration and submitted additional medical evidence. By decision dated March 31, 1997, the Office found that the

additional evidence was not sufficient to modify its prior decisions. By letter dated March 31, 1998, appellant requested reconsideration and submitted additional medical evidence. By decision dated April 21, 1998, the Office found that the additional medical evidence was cumulative, did not address the issue and was not sufficient to warrant review of its prior decisions.

By letter dated April 20, 1999, appellant requested reconsideration and submitted a report dated April 12, 1999 from Dr. Norek. By letter dated July 13, 1999, the Office advised appellant that he was not entitled to a reconsideration and that his only avenue of appeal was with the Board. By letter to the Office dated July 15, 1999, appellant requested that his case be forwarded to the Board. The Board received this letter on March 14, 2000 and docketed the present appeal. On May 11, 2000 the Director of the Office filed a motion to dismiss appellant's appeal, on the grounds that the July 13, 1999 letter from the Office was informational only and did not purport to be a final decision of the Office. By order dated June 21, 2000, the Board denied the Director's motion to dismiss; the Board found that the Office's "July 13, 1999 letter, in effect, constituted a decision from which appellant timely filed an appeal with this Board."

The only Office decision before the Board on this appeal is the Office's July 13, 1999 decision, finding that appellant was not entitled to reconsideration. Although the Board, in its order denying the Director's motion to dismiss, found that a final decision was issued on July 13, 1999, this decision did not adjudicate the merits of appellant's claim but instead found only that appellant was not entitled to reconsideration. Since more than one year elapsed between the date of the Office's most recent merit decision on March 31, 1997 and the filing of appellant's appeal on March 14, 2000, the Board lacks jurisdiction to review the merits of appellant's claim.¹

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)(2), 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. 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

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's final decision being appealed.

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

The Board finds that appellant is not entitled to further review of the merits of his claim.

Appellant's April 20, 1999 letter, requesting reconsideration contained no argument and was accompanied by only one piece of additional evidence, an April 12, 1999 report from Dr. Norek. This report does not address whether appellant sustained a recurrence of disability in February or March 1993 related to his January 9, 1989 employment injury and thus does not constitute relevant evidence that would require that the Office reopen the case for a further review of the merits of appellant's claim.

The July 13, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 19, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

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

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