

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN T. ADCOCK and DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, GA

*Docket No. 00-2751; Submitted on the Record;
Issued November 5, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for merit review pursuant to 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretion in denying appellant's request for review of the merits of his claim.

On July 20, 1992 appellant, then a 38-year-old sheet metal worker, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that, on July 18, 1992, he slipped and sustained a lower back sprain at the lower back belt level. The claim was accepted for lumbosacral strain, herniated disc at L4-5, and resultant L4-5 discectomy, medical and compensation benefits were paid, and appellant received further job training.

On April 2, 1999 the Office issued a notice of proposed reduction of compensation, recommending that appellant's compensation benefits be reduced to reflect his wage-earning capacity as a bookkeeper. By decision dated May 19, 1999, the proposed reduction in compensation was made final. In the same decision, the Office found that authorization for the proposed procedure of lumbar decompression, discectomy and fusion at L4-5 was denied and that the condition of herniated nucleus pulposus L4-5 was rescinded from the accepted conditions due to the work injury.

By letter dated April 2, 2000, appellant requested reconsideration. On April 12, 2000 the Office denied reconsideration, as it found the request for reconsideration insufficient to warrant a review of the Office's decision of May 19, 1999. The Office noted that appellant failed to submit any medical documentation to support his contentions that the Office erred in reducing his compensation.

By letter dated May 18, 2000, appellant again requested reconsideration. In support, appellant submitted an April 19, 2000 medical report from Dr. Peter O. Holliday, III, a Board-certified neurosurgeon, who noted that appellant had not seen him for eight months, that he still had a bad low back and was unable to sit for more than 30 to 40 minutes, and that therefore he would not be able to do the job of bookkeeper. Dr. Holliday further noted that he believed that appellant had “L4-5 disc disease and possibly L3-4 and L5-S1.”

By decision dated June 13, 2000, the Office denied appellant’s request for reconsideration, finding that the evidence submitted in support of the request was repetitious and cumulative in nature and not sufficient to warrant review of the prior decision. The Office rejected appellant’s contention that it should have referred appellant to an impartial medical examiner. The Office noted that in its prior decisions it had explained that the weight of the medical evidence was represented by the February 2, 1999 report of Dr. Michael W. Gorum, a Board-certified neurosurgeon, and the Office medical adviser which establish that surgical intervention was not indicated and that the conditions of degenerative changes and disc bulge at L4-5 were not causally related to the July 18, 1992 work injury. The Office noted that Dr. Holliday merely reviewed the history of the condition and complaints, without providing any new findings. Therefore, his report was cumulative and repetitious of the evidence already in the record.

The Board’s jurisdiction is limited to final decision of the Office issued within one year of the filing of the appeal.¹ Since appellant filed his appeal on July 12, 2000, the only decisions over which the Board has jurisdiction on this appeal are the April 12 and June 13, 2000 decisions denying reconsideration on the merits.²

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act,³ the Office regulations provide that a claimant may obtain review of the merits of the claim by submitting evidence or argument that (1) shows that the Office erroneously applied or interpreted a specific point of law, (2) advances a relevant legal argument not previously considered by the Office, or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁴

In the instant case, appellant submitted no new relevant or pertinent evidence. The only new evidence that was submitted was the April 19, 2000 medical report of Dr. Holliday, which was repetitive of other reports already in evidence, nor did appellant show that the Office erroneously applied or interpreted a specific law, or advance a relevant legal argument not previously considered by the Office. Accordingly, the Office properly denied appellant’s requests for reconsideration on the merits.

¹ See 20 C.F.R. § 501.3(d)(2).

² See *Jacqueline M. Nixon-Steward*, 52 ECAB ____ (Docket No.99-1345, issued November 3, 2000).

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

The decisions of the Office of Workers' Compensation Programs dated June 13 and April 12, 2000 are hereby affirmed.

Dated, Washington, DC
November 5, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member