

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARION E. STEPHENS and U.S. POSTAL SERVICE,
POST OFFICE ANNEX, Cincinnati, OH

*Docket No. 98-2438; Submitted on the Record;
Issued October 2, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

The case has been on appeal previously.¹ In a June 3, 1997 decision, the Board noted that there was a conflict in the medical evidence between Dr. Marsha J. Smith, a general practitioner and Dr. Richard T. Sheridan, a Board-certified orthopedic surgeon, on whether appellant had any remaining disability due to his January 26, 1976 employment injury, which was accepted for a fracture of the base of the fourth metacarpal of the right hand, slight medial displacement, temporary aggravation of a congenital anomaly of the lumbosacral spine, greater trochanteric bursitis, ganglion cyst of the right wrist, chronic pain disorder and cervical strain. The Office referred appellant to Dr. Charles D. Miller, a Board-certified orthopedic surgeon acting as an impartial medical specialist, who concluded that appellant did not have any remaining disability due to the employment injury. The Board concluded that Dr. Miller's report, as the impartial medical specialist, was entitled to special weight and, therefore, constituted the weight of the medical evidence. The Board affirmed the Office's termination of appellant's compensation benefits.

In a May 1, 1998 letter, appellant requested reconsideration. He submitted in support of his request medical reports and records that had been submitted previously. He also submitted a March 11, 1998 letter he had written to the Secretary of Labor, in which he noted that, after the Office had referred him to Dr. Miller for an examination in November 1993, appellant sought treatment from him on December 8, 1993 for the same injuries, which Dr. Miller stated had resolved. Appellant submitted a copy of two prescriptions signed by Dr. Miller and a referral from Dr. Miller to a pain management center.

¹ Docket No. 95-410 (issued June 3, 1997). The history of the case is contained in the prior decision and is incorporated by reference.

Appellant also submitted an October 30, 1997 report from Dr. Rebecca S. Cornelius, a Board-certified radiologist, who stated that a magnetic resonance imaging (MRI) scan of the neck showed mild disc bulging at C6-7 without evidence of neural compression. He submitted a November 26, 1997 report from Dr. Francis X. Florez, a Board-certified orthopedic surgeon, who stated that appellant had chronic neck pain and low back pain and requested authorization for three epidural steroid injections to the neck. In an April 28, 1998 report, Dr. Florez indicated that appellant had been treated at his medical office since March 10, 1994 for a long history of back, neck, right thigh and right hand problems since a January 16, 1976 employment injury. She stated that appellant had had persistent symptomatology of neck and back pain with radiating pain. Dr. Florez noted MRI scans of the back and neck showed significant degenerative disease and mild bulging discs but nothing operative. She concluded that appellant remained disabled for work and was unable to sustain any type of work habit or perform any job activities secondary to the severe condition of his neck, low back, thigh and hand.

In a May 13, 1998 decision, the Office denied appellant's request for reconsideration on the grounds that the April 24, 1998 report of Dr. Florez submitted neither raised substantive legal issues nor included new and relevant evidence and, therefore, was insufficient to warrant review of the prior decision.

In a May 29, 1998 letter, appellant again requested reconsideration. He contended that he should be allowed to use Dr. Florez' report because the Office had requested clarification from Dr. Miller and, if every report was to be weighted equally, Dr. Florez' report should receive equal treatment. He also submitted records from equal employment opportunity claims for discrimination that he had submitted and then withdrawn. He claimed that the effects and results of these claims and the matters related to the claims had aggravated his condition. He submitted other reports submitted previously, including the prescriptions and referral from Dr. Miller. In a June 25, 1998 decision, the Office again denied appellant's request for reconsideration on the grounds that the request neither raised substantive questions nor included new, relevant medical evidence and, therefore, was insufficient to warrant review.

The Board finds that the Office properly denied appellant's request for reconsideration.

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, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) 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.² Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for

² 20 C.F.R. § 10.138(b)(2).

reopening a case.³ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁴

Appellant submitted medical reports and evidence that had been submitted previously. This duplicative material was insufficient to require a review of appellant's case. The evidence concerning appellant's discrimination claim is irrelevant to the issue of whether the Office properly terminated appellant's claim as the evidence was submitted to show factors, which related to the cause of appellant's disability, not whether the accepted employment-related conditions has ceased or had ceased to cause disability. The reports of Dr. Florez also were insufficient to warrant a review of appellant's case. Appellant had been examined previously by other physicians in the same office. He repeated the findings and conclusions of his associates that appellant was disabled due to back and neck pain, which he related to appellant's employment injury. His reports presented nothing new and, therefore, cannot form a basis for a review of the decision to terminate appellant's compensation.

The decisions of the Office of Workers' Compensation Programs, dated June 25 and May 13, 1998, are hereby affirmed.

Dated, Washington, D.C.
October 2, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁴ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).