

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GLEN THOMPSON and DEPARTMENT OF DEFENSE,  
DEFENSE DEPOT, Memphis, TN

*Docket No. 01-250; Submitted on the Record;  
Issued August 12, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
A. PETER KANJORSKI

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

On March 17, 1992 appellant, then a 39-year-old material handler, injured his head, neck and right leg when the brakes malfunctioned in the golf car in which he was riding, causing the cart to strike a loading dock. He filed a claim for benefits on the date of injury, which the Office accepted on April 22, 1992 for cervical strain, head contusion/blunt trauma and right leg puncture. The Office subsequently expanded the claim to include the condition of herniated nucleus pulposus at L4-5. Appellant returned to work on light duty on November 14, 1994 and the Office paid compensation for appropriate periods.<sup>1</sup>

On April 25, 1995 appellant injured his lower back while lifting a box of boots. He filed a claim for benefits on the date of injury, which the Office accepted on July 31, 1995 for lumbosacral strain.

By decision dated January 18, 1996, the Office terminated appellant's compensation. By letter dated January 25, 1996, appellant requested an oral hearing, which was held on July 31, 1996. By decision dated March 14, 1997, an Office hearing representative set aside the prior Office decision, reinstated appellant's compensation and remanded to the district Office for referral to a referee medical examiner.

On June 9, 1997 the Office referred appellant to Dr. Harry Friedman, a Board-certified neurosurgeon, for a referee medical examination.

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<sup>1</sup> The Office terminated appellant's compensation by decision dated October 17, 1994. Appellant requested a hearing on November 7, 1994, which was held on June 15, 1995. An Office hearing representative affirmed the prior Office decision by decision dated August 25, 1995.

In a report dated September 19, 1997, Dr. Friedman found that appellant had no objective findings, and indicated that he sustained a lumbar strain which should have resolved. He concluded that appellant had no residuals stemming from his April 25, 1995 employment injury.

By decision dated November 17, 1997, the Office terminated appellant's compensation based on Dr. Friedman's referee report.

By letter dated November 25, 1997, appellant requested an oral hearing.

By decision dated May 28, 1998, an Office hearing representative set aside the prior Office decision based on a review of the written record, finding that Dr. Friedman's report was not a sufficient basis on which to terminate appellant's compensation. The hearing representative reinstated appellant's compensation and referred appellant back to Dr. Friedman for reexamination, followed by an additional report and clarification of opinion.

Dr. Friedman reexamined appellant on July 30, 1998, and in a report dated October 16, 1998, stated that there were no objective findings of neurological dysfunction. He advised that, based on his examination showing a lack of objective findings, symptom magnification and negative studies, he believed appellant should be able to return to work. Dr. Friedman concluded that appellant had no residuals from the April 25, 1995 employment injury.

By decision dated January 22, 1999, the Office terminated appellant's compensation, finding that Dr. Friedman's referee opinion represented the weight of the medical evidence.

By letter dated February 16, 1999, appellant requested an oral hearing, which was held on July 28, 1999.

By decision dated September 1, 1999, an Office hearing representative affirmed the January 22, 1999 Office termination decision.

By facsimile dated September 1, 2000, appellant's attorney requested reconsideration. In support of his request, appellant submitted a February 14, 2000 report from Dr. John P. Howser, a Board-certified neurosurgeon and appellant's treating physician, who stated:

“[Appellant] returned to my office on October 6, 1999. We reviewed his old CT [computerized tomography] [scan] at that time and it revealed a ruptured disc at L5 and central along with a canal stenosis at L4. We discussed his options at that time and he wants to have the CT repeated and he also needs an EMG [electromyograph] of both lower extremities.”

Appellant also submitted reports from Dr. Howser dated August 5 and 17, 1999, both of which had been previously considered by the Office hearing representative in his September 1, 1999 decision, in addition to a lumbar x-ray dated November 30, 1999.

By decision dated October 31, 2000, 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 her claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.606, 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.<sup>2</sup> 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.<sup>3</sup>

In this case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law and he has not advanced a relevant legal argument not previously considered by the Office. Dr. Howser's February 4, 2000 report is not relevant and pertinent because it merely notes that he examined appellant on October 6, 1999, that he reviewed his diagnostic tests and discussed certain options regarding the treatment of appellant's lower back condition. The August 5 and 17, 1999 reports from Dr. Howser were previously considered and rejected by the Office in its September 1, 2000 decision; the November 30, 1999 x-ray report is not pertinent. Therefore, the Office acted within its discretion in refusing to reopen appellant's claim for a review on the merits.

The decision of the Office of Workers' Compensation Programs dated October 31, 2000 is hereby affirmed.

Dated, Washington, DC  
August 12, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>2</sup> 20 C.F.R. § 10.606. *See generally* 5 U.S.C. § 8128(a).

<sup>3</sup> *Howard A. Williams*, 45 ECAB 853 (1994).