

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORRAINE McKINNEY and DEPARTMENT OF THE NAVY,
WASHINGTON NAVY YARD, Washington, DC

*Docket No. 02-731; Submitted on the Record;
Issued August 2, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

On January 22, 1997 appellant, then a 48-year-old automation clerk, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that she sustained injuries when she was "head butted" by another employee on January 9, 1997. By letter dated March 4, 1997, the Office accepted appellant's claim for "stereotyped movements" and "contusion of the face, scalp and neck."

On May 1, 2000 appellant filed a notice of recurrence of the January 9, 1997 accepted injury (Form CA-2a). Appellant alleged that cold air blowing on her shoulder at work has aggravated her previous pain in her neck. In support of her claim, appellant submitted a May 2, 2000 medical report by Dr. Jorge A. Mondino, an orthopedic surgeon, wherein he indicated that appellant saw him on that date "complaining of persistent neck pain and left shoulder pain." He indicated that a magnetic resonance imaging (MRI) "showed a bulging disc at C4-5 and flattening of the left ventral aspect of the spinal cord with mild spinal stenosis. She also has bulging at C4-5 and bulging at C6-C7." He recommended therapy.

By letter dated June 6, 2000, the Office requested further information. Appellant responded by submitting further medical reports by Dr. Mondino, dated from August 6, 1999 until May 2, 2000. In the August 6, 1999 report, Dr. Mondino indicated:

"This is a 50-year-old lady complaining of pain on the left arm for one week. She states that at work she sits next to an air conditioning vent and the cold has been affecting her arm. There is no history of a recent injury."

Dr. Mondino went on to indicate that appellant "has an inflammatory process of the left upper extremity with some tendinitis of the left wrist." He placed her in a short arm plaster

splint. In the report of September 21, 1999, Dr. Mondino indicated that the electromyogram failed to reveal any gross abnormality.

Appellant also submitted the report of the MRI dated November 30, 1999 wherein Dr. Alan J. Kronthal, a Board-certified radiologist, indicated:

“1. Small left paracentral disc protrusion at C5-6 which mildly flattens the left ventral lateral aspect of the cord with mild spinal stenosis. The left neural forament also appears narrowed and the left C6 nerve root may be compromised.

“2. Small posterior central disc protrusion at C4-5 which minimally flattens the ventral midline aspect of the cord with mild spinal stenosis.

“3. Small disc bulge and/or protrusion at C6-7 which contacts the ventral surface of the cord with mild spinal stenosis but no significant cord flattening. Mild bilateral forminal narrowing is noted at this level.”

By decision dated August 17, 2000, the Office denied appellant’s claim for recurrence, noting that the medical evidence was not sufficient to establish that her condition was caused by the original injury. By letter dated March 28, 2001, appellant requested reconsideration. In support thereof, appellant submitted a copy of the May 2, 2000 report of Dr. Mondino, a report that was already in the record.

By decision dated July 9, 2001, the Office denied appellant’s request for reconsideration, finding that the evidence submitted in support of the request for review was repetitious in nature and not sufficient to warrant review of the prior decision.

The Board’s jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.¹ Since appellant filed her appeal on November 2, 2001, the only decision over which the Board has jurisdiction on this appeal is the July 9, 2001 decision denying reconsideration.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 and 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 Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.

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).

In this case, appellant has not raised any new arguments that the Office erroneously applied or interpreted a point of law. Nor has appellant submitted any new relevant and pertinent evidence not previously considered by the Office. In fact, the only report appellant submitted with her request for reconsideration was the May 2, 2000 medical report by Dr. Mondino, a report that was already in the record. The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim.⁵ Therefore, appellant has not established that the Office abused its discretion in denying appellant's request for review on the merits under section 8128(a) of the Act.

The decision of the Office of Workers' Compensation Programs dated July 9, 2001 is hereby affirmed.

Dated, Washington, DC
August 2, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

⁵ See *Richard L. Ballard*, 44 ECAB 146 (1992); *Eugene F. Butler*, 36 ECAB 393 (1984).