

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SALVATORE BUONO and U.S. POSTAL SERVICE,
POST OFFICE, Providence, RI

*Docket No. 01-282; Submitted on the Record;
Issued January 4, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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 his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board's jurisdiction to consider and decide appeals from a final decision of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed the appeal with the Board on October 18, 2000, the only decision before the Board is the Office's October 6, 2000 decision, denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (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.² A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).³

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² Section 10.606(b)(2)(i-iii).

³ Section 10.608(a).

This case is on appeal to the Board for the third time.⁴ On the first appeal, the Board reviewed the Office's March 30, 1990 decision, by which the Office denied appellant's claim and found that the medical evidence of record did not establish that appellant's arm condition was work related. The Board found that the opinion of the referral physician, Dr. Richard G. Bertini, a Board-certified orthopedic surgeon, on which the Office relied in denying the claim, was not well rationalized. The Board remanded the case for the Office to obtain a rationalized medical opinion from Dr. Bertini as to whether appellant's diagnosed conditions including cervical osteoarthritis and cervical radiculitis were causally related to his 1977 or 1985 employment injuries or the January 31, 1986 lifting incident or to factors of appellant's employment. By decision dated October 28, 1991, the Office accepted appellant's claim for chronic impingement syndrome of the left shoulder and cervical radiculitis as well as left carpal tunnel syndrome.

In the second appeal, the Office affirmed the Office's December 7, 1996 decision, finding that the opinion of appellant's treating physician, Dr. Ronald C. Hillegass, a Board-certified orthopedic surgeon, was insufficiently rationalized to establish that appellant sustained a recurrence of disability, due to his January 31, 1986 employment injury, commencing in 1988.

By letter dated July 10, 2000, appellant requested reconsideration of the Board's decision and submitted additional evidence.

By decision dated October 6, 2000, the Office denied appellant's request for reconsideration.

The Board has reviewed the case record and finds that the Office properly declined to reopen appellant's case for further consideration of the merits.

In support of his request for reconsideration, appellant submitted a medical report from Dr. Hillegass dated July 8, 1997, a magnetic resonance imaging (MRI) scan dated August 15, 1989, a doctor's referral note dated October 24, 1977, a disability note dated February 26, 1986 and a report from Dr. Martin H. Triedman, a Board-certified psychiatrist and neurologist, dated December 9, 1981. Appellant also submitted a postoperative report from Dr. Hillegass dated March 12, 1986, results of a left shoulder arthrogram from Dr. Mehdi Abedi, a radiologist, dated January 3, 1986, a request for authorization for treatment dated October 25, 1977, an attending physician's report dated October 22, 1977, the Office's October 28, 1991 decision and the January 5, 1995 letter from appellant's attorney. All this evidence was contained in the record. Appellant submitted progress notes from Dr. Hillegass dated from September 25, 1981 through September 8, 1989, almost all of which were contained in the record. Those few progress notes that were not contained in the record are duplicative of those which were previously submitted.

Other evidence appellant submitted was the first page of a medical report dated January 8, 1990, the first page of a medical report from Dr. Hillegass dated August 28, 1981, the first page of a letter from the Office dated December 27, 1994 responding to the inquiry of

⁴ Docket No. 90-1337 (issued September 28, 1990); Docket No. 97-1310 (issued July 23, 1999). The facts and history surrounding the prior appeals are set forth in the initial two decisions and are hereby incorporated by reference.

appellant's congressman, a page from a report from "Dr. Lawrence Lee" dated June 30, 1993 describing a surgical procedure, a brief, undated report from "Dr. Ken Catalozzi," and the results of an arthrogram dated October 13, 1992 from Dr. Abedi. This evidence is either duplicative of evidence contained in the record or not relevant to the issue of whether appellant sustained a recurrence of disability commencing in 1988 causally related to his January 31, 1986 employment injury.

New evidence appellant submitted was the report from Dr. Audrey R. Kupchan, a Board-certified internist, dated June 1, 2000 and a report from Dr. Norman A. Kornwitz, a Board-certified orthopedic surgeon, dated June 19, 2000. In her report, Dr. Kupchan stated that she treated appellant for many years for chronic shoulder pain which appellant dated to injuries at his previous employment at the employing establishment. She stated that appellant's shoulder condition was disabling, that he was unable to function without regular analgesic usage and his quality of life was affected. Dr. Kupchan's report is not relevant to whether appellant sustained a recurrence of disability in 1988 of his January 31, 1986 employment injury as she does not address causation, does not address a recurrence of disability and provides no rationalized medical opinion on causation.⁵

In his June 19, 2000 report, Dr. Kornwitz stated that he treated appellant intermittently for 10 years for chronic left shoulder pain and that appellant related his complaint to an on-the-job injury which occurred at the employing establishment on October 12, 1985. He reviewed diagnostic tests of record including an MRI scan. Based on his examinations of appellant in 1990 and 1997, Dr. Kornwitz diagnosed left shoulder subdeltoid bursitis, post rotator cuff surgery. He opined that appellant's "problem [was] causally related to his injury" at the employing establishment. Dr. Kornwitz stated that he agreed with Dr. Kupchan that the quality of appellant's life had been significantly affected. Dr. Kornwitz's opinion is also not relevant because Dr. Kornwitz did not address a recurrence of disability occurring in 1988 and did not provide a rationalized medical opinion explaining how appellant's left shoulder condition is related to appellant's employment.

Inasmuch as appellant did not show that the Office erroneously applied or interpreted a specific point of law, and did not advance a relevant legal argument or submit relevant and pertinent new evidence not previously considered by the Office, he has failed to support his request for reconsideration. The Office acted within its discretion in denying his request.

⁵ See *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

The Office of Workers' Compensation Programs' October 6, 2000 decision is hereby affirmed.

Dated, Washington, DC
January 4, 2002

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member