

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNY HOBGOOD and U.S. POSTAL SERVICE,
POST OFFICE, Sacramento, CA

*Docket No. 01-941; Submitted on the Record;
Issued January 25, 2002*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

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

The Board has duly reviewed the case record and finds that the Office acted within its discretion in refusing to reopen appellant's case.

On July 8, 1997 appellant, then a 47-year-old letter carrier, filed a notice of occupational disease claiming "neck pain." He stated that on January 2, 1995 his "neck stuck" when he dropped a piece of mail and bent down to pick it up.

By decision dated October 14, 1997, the Office denied appellant's claim on the grounds that he did not establish fact of injury.

A magnetic resonance imaging (MRI) scan dated July 14, 1997 indicated that appellant had degenerative disc disease at levels C5-6.

By letter dated November 4, 1997, appellant requested reconsideration of the Office's October 14, 1997 decision.

By decision dated December 29, 1997, the Office denied modification of its previous decision.

The Office received a December 9, 1997 report from Dr. Jonathan W. Lehrman, a Board-certified family practitioner, who diagnosed degenerative disc disease at levels C4-5 through C6-7 and opined that appellant's condition was caused by carrying heavy loads of mail at work.

By decision dated April 2, 1998, the Office vacated the December 29, 1997 decision based on Dr. Lehrman's December 9, 1997 report and accepted appellant's claim for a cervical strain due to carrying mail in 1995.

By letter dated October 28, 1998, the Office referred appellant, along with the medical evidence of record and a statement of accepted facts, to Dr. David Chan, a Board-certified orthopedic surgeon, for a second opinion examination.

On September 28, 1998 appellant filed a claim for a schedule award.

In a report dated November 24, 1998, Dr. Chan indicated that appellant mainly complained of numbness in the fingertips of his left hand and neck pain. He diagnosed "degenerative disc disease C5-6 with bilateral foraminal narrowing." Dr. Chan opined that appellant's continuing neck pain was related to his underlying degenerative disc disease rather than the January 2, 1995 work injury. He also stated that appellant's work injury caused a flare-up of his preexisting degenerative disc disease, but that the aggravation symptoms should have already ceased. Dr. Chan opined that appellant's cervical degeneration had returned to its baseline pathology and was now the result of its natural progression.

Based on Dr. Chan's November 24, 1998 report, the Office issued a notice of proposed termination of compensation on February 9, 1999.

By decision dated March 17, 1999, the Office terminated appellant's compensation and denied his claim for a schedule award.

Appellant submitted a report from Dr. David C. Jones, a Board-certified neurological surgeon, dated April 8, 1999. He opined that appellant's condition was related to his employment.

Appellant filed a second occupational disease claim on July 15, 1999 alleging "cervical degenerative disease in his neck." He indicated that his duties as a letter carrier for the past nine years caused and aggravated his degenerative spine disease, which resulted in his chronic neck and arm pain.

By letter dated August 17, 1999, the Office combined appellant's claims, stating that they involved the same part of the body and that the new claim appeared to be a duplicate of the already existing claim. The Office reminded appellant that compensation in his first claim was terminated because his neck condition and disability after March 17, 1999, were no longer causally related to factors of his federal employment.

By letter dated October 25, 2000, appellant requested reconsideration of the Office's March 17, 1999 decision terminating his compensation as of March 17, 1999. His representative indicated that his original claim was for "neck strain" and that his second claim was for exacerbation of his degenerative spine disease with stenosis.

By decision dated January 19, 2001, the Office denied appellant's request for reconsideration of the March 17, 1999 decision.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ Because more than one year has elapsed between the issuance of the Office's March 17, 1999 merit decision and February 12, 2001, the date appellant filed his appeal with the Board, the only decision before the Board is the Office's January 19, 2001 nonmerit decision.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁵

In this case, appellant filed his first occupational disease claim for "neck pain" on July 8, 1997. He filed his second occupational disease claim on July 15, 1999 for "advanced degenerative spine disease." Appellant's claim for neck pain was accepted on April 2, 1998 and he received appropriate compensation. His benefits were terminated on March 17, 1999 when the Office determined that appellant no longer suffered from any residuals causally related to his accepted clerical strain. Appellant is appealing the March 17, 1999 decision terminating his benefits.

In support of his October 25, 2000 request for reconsideration, appellant submitted a January 20, 2000 report from Dr. Benjamin Ling, a January 13, 2000 report from Dr. Lehrman, a copy of the CA-2 claim, dated July 15, 1999 along with a statement from appellant, a copy of the CA-2 claim, dated July 8, 1997, an April 8, 1999 report from Dr. Jones and a position description of a letter carrier. All the information submitted by appellant with his request for reconsideration duplicates that already in the record with the exception of the January 20, 2000 report from Dr. Ling. His report, however, is irrelevant to the issue in this case because it addresses a new incident of September 28, 1999 for which appellant received treatment and physical therapy. Dr. Ling does not discuss the accepted cervical strain or how appellant's disability after March 17, 1999, the date of termination of his compensation benefits, was due to the accepted cervical strain.

Appellant has not established that the Office abused its discretion in its January 19, 2001 decision by denying his request for a review on the merits because he did not show that the

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

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.606.

⁴ 20 C.F.R. § 10.607.

⁵ 20 C.F.R. § 10.608.

Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office.

The January 19, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 25, 2002

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member