

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHAR K. ALLEN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS AFFAIRS MEDICAL CENTER, Cincinnati, OH

*Docket No. 01-1792; Submitted on the Record;
Issued June 10, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

On September 29, 1995 appellant, then a 50-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that she sustained back and neck injuries as well as numbness in the right foot with pain down the leg while moving a bed.¹ The Office accepted the claim for back strain and exacerbation of preexisting cervical disease.²

Appellant filed a claim for recurrence of disability on October 28, 1996 for disability beginning June 7, 1996.³

On December 30, 1996 the Office denied appellant's claim for a recurrence of disability beginning July 27, 1996.

Appellant's counsel requested reconsideration by letter dated December 24, 1997 and submitted medical evidence in support of her request.

¹ This was assigned claim number 09-0409457. The record contains evidence appellant filed an occupational disease claim for her carpal tunnel syndrome which was assigned claim number 06-0656502 and denied by the Office on September 17, 1996.

² On March 8, 1999 the employing establishment issued a notice of separation for disability effective March 22, 1999.

³ The Board notes that appellant filed a second claim for recurrence of disability on July 29, 1998 for disability beginning July 16, 1998. The record contains no decision by the Office on appellant's second claim for a recurrence of disability.

On September 10, 1998 the Office denied appellant's request for reconsideration of the denial of her recurrence claim.

By letters dated January 18 and February 10, 1999, appellant's counsel requested reconsideration and submitted evidence in support of her request.

In a letter dated March 16, 1999, appellant's counsel requested reconsideration and submitted evidence in support of her request.

By merit decision dated March 17, 1999, the Office denied appellant's request for reconsideration dated January 18, 1999.

By merit decision dated July 1, 1999, the Office denied appellant's March 16, 1999 request for modification of the denial of her recurrence claim.

In an undated letter, appellant requested reconsideration of the denial of her recurrence claim and submitted evidence in support of her request including a March 16, 2000 report by Dr. Jeanne T. Kavinsky, an attending Board-certified internist.

By nonmerit decision dated April 7, 2000, the Office denied appellant's request for reconsideration on the basis that the evidence submitted was immaterial, repetitious and/or cumulative.

In a letter dated April 6, 2000 and received on April 10, 2000, appellant's counsel requested consideration submitted a copy of a March 16, 2000 report by Dr. Kavinsky in support of her request. Appellant contended that Dr. Kavinsky's report supports her contention that she is totally disabled due to her employment injury.

By nonmerit decision dated July 21, 2000, the Office denied appellant's request for reconsideration.

The Board finds that the Office properly determined appellant's request for reconsideration was insufficient to warrant merit review of the claim.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.⁴ Since appellant filed her appeal on July 3, 2001, the only decision over which the Board has jurisdiction on this appeal is the Office's July 21, 2000 decision denying reconsideration on the merits. The Board does not have jurisdiction over the earlier decisions on the merits of the claim.⁵

⁴ See 20 C.F.R. § 501.3(d)(2).

⁵ See *Jacqueline M. Nixon-Steward*, 52 ECAB ____ (Docket No. 99-1345, issued November 3, 2000).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁶ 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.⁷ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.⁸ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁹

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 and relevant evidence not previously submitted. With her April 6, 2000 request for reconsideration, appellant submitted a March 16, 2000 report by Dr. Kavinsky. This report had been previously submitted and considered by the Office when it issued its nonmerit April 7, 2000 decision. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.¹⁰ Therefore, appellant was not entitled to a merit review of her claim.

The July 21, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 10, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

⁶ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ 20 C.F.R. § 10.607(a).

⁹ 20 C.F.R. § 10.608(b).

¹⁰ See *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 25 ECAB 309 (1983).