

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN A. VERRINDER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, West Haven, CT

*Docket No. 01-1992; Submitted on the Record;
Issued May 2, 2002*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

On October 17, 1995 appellant, then a 35-year-old nurse recruiter, was injured in the performance of duty when she slipped on a tile floor and twisted her back in an attempt not to fall. The Office accepted the claim for lumbar subluxation at L5-S1 and authorized chiropractic care. Appellant continued to work under certain medical restrictions.

Appellant subsequently filed a claim for a recurrence of disability beginning December 23, 1997.¹

In a March 24, 1998 decision, the Office found the evidence insufficient to establish that appellant sustained a recurrence of disability and therefore denied compensation.

On April 13, 1998 appellant requested a review of the written record.

In a decision dated September 11, 1998, an Office hearing representative affirmed the Office's March 24, 1998 decision.

In a letter dated July 16, 1999, James Delaney submitted a signed attorney authorization form and stated that he had been retained to represent appellant "in reconsideration" of her workers' compensation claim. Mr. Delaney requested a copy of the file, a copy of the statement

¹ Appellant was involved in a nonwork-related motor vehicle accident on July 17, 1997 and was treated by Dr. Gerald F. Cambria for acute lumbar and cervical strains.

of accepted facts and a list of impartial medical specialists. He provided a signed authorization form.²

In a September 1, 2000 letter, appellant requested reconsideration and contended that the Office failed to consider relevant evidence including a January 2, 1998 report by Dr. Gerald F. Cambria, a Board-certified orthopedic surgeon, and reports dated February 20 and April 7, 1998 by Dr. Robert W. Nolan.³

In a decision dated February 2, 2001, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of her request was repetitious and not sufficient to warrant a merit review.

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.⁴ Because appellant's appeal was filed on August 15, 2001, the only case before the Board is the Office decision dated February 2, 2001, denying appellant's request for reconsideration. The Board does not have jurisdiction to review the propriety of the Office's September 11, 1998 decision on the merits of the claim.

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration on the merits under section 8128.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.⁵ The regulations provide that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.⁶ When an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim. 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.⁷ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁸

² The Board notes that, although the attorney mentioned the word "reconsideration," the nature of the July 16, 1999 letter was to request information and supply appellant's authorization. The Board has held that a request for information is not to be construed as a request for reconsideration; see *Thankamma Mathews*, 44 ECAB 765 (1993).

³ This evidence was previously submitted to the Office with appellant's hearing request.

⁴ See 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

⁵ 5 U.S.C. § 8128; see *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁶ 20 C.F.R. § 10.606(b) (1999).

⁷ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁸ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

In this case appellant did not show that the Office erroneously applied or interpreted a specific point of law. She did not advance a relevant legal argument not previously considered by the Office. Although appellant's reconsideration request cites evidence which she felt was ignored by the Office in denying her claim for a recurrence of disability, she did not submit any new and relevant evidence to warrant a merit review. The three medical reports cited to by appellant were already of record and taken into consideration by the Office in denying her claim for a recurrence of disability. 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 case.⁹ Because appellant did not satisfy the requirements of section 8128, the Office properly refused to perform a merit review.

The decision of the Office of Workers' Compensation Programs dated February 2, 2001 is hereby affirmed.

Dated, Washington, DC
May 2, 2002

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ *Paul Kovash*, 49 ECAB 350 (1998).