

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGORY M. BAKER and DEPARTMENT OF THE ARMY,
CORP OF ENGINEERS, Vicksburg, MI

*Docket No. 02-1399; Submitted on the Record;
Issued October 18, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
DAVID S. GERSON

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

Appellant, a 32-year-old leadman, injured his lower back and neck on August 15, 1990 when the ship on which he was working was struck by another ship. He filed a claim for benefits on November 3, 1990 which the Office accepted for low back and cervical strain.

On February 23, 2000, appellant filed a Form CA-2 claim for benefits, alleging that he sustained a recurrence of disability on November 1, 1999 which was caused or aggravated by his August 15, 1990 employment injury.

By decision dated February 6, 2001, the Office denied appellant compensation for a recurrence of his accepted cervical and thoracic conditions. The Office found that appellant failed to submit medical evidence sufficient to establish that the claimed condition or disability as of November 1, 1999 was caused or aggravated by the August 15, 1990 employment injury.

In a letter received by the Office on January 29, 2002, appellant requested reconsideration of the Office's February 6, 2001 decision. Appellant submitted a December 14, 2001 report from Dr. James L. Zum Brunnen, a Board-certified orthopedic surgeon. Dr. Zum Brunnen stated:

“[Appellant] reports generalized low back pain with pain running down both legs along with numbness and tingling in the toes of the left foot. The symptoms on the left are noted more than the right. He reports severe back pain with his back bothering him more than his legs.... He notes some numbness over the lateral aspect of the left foot. The patient states that he has not worked in [two] years.”

* * *

“The MRI [magnetic resonance imaging] films performed on February 9, 2000 ... [show] a large herniated disc at L5-S1 on the left.

“I believe that [appellant] has a double-root syndrome, that is, involvement of both L5-S1 nerve roots. He was previously advised about surgical treatment to include laminectomy, discectomy, fusion and instrumentation. I see no reason to change this recommendation.”

By decision dated March 20, 2002, the Office denied appellant’s application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant’s case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

The only decision before the Board on this appeal is the March 20, 2002 Office decision, which found that the letter submitted in support of appellant’s request for reconsideration was insufficient to warrant review of its prior decision. Since the March 20, 2002 decision is the only decision issued within one year of the date that appellant filed his appeal with the Board, May 14, 2002, this is the only decision over which the Board has jurisdiction.

Under 20 C.F.R. § 10.607, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.¹ 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.²

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law and he has not advanced a relevant legal argument not previously considered by the Office. Dr. Zum Brunnen’s December 14, 2001 report did not contain a probative, rationalized medical opinion regarding whether appellant’s claimed condition or disability as of November 1, 1999, was caused or aggravated by the August 15, 1990 employment injury and is, therefore, not relevant and pertinent. Additionally, appellant’s February 29, 2002 letter, failed to show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Therefore, the Office did not abuse its discretion in refusing to reopen appellant’s claim for a review on the merits. The Board, therefore, affirms the Office’s March 20, 2002 decision.

¹ 20 C.F.R. § 10.607(b)(1). *See generally* 5 U.S.C. § 8128(a).

² *Howard A. Williams*, 45 ECAB 853 (1994).

The March 20, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 18, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member