

**United States Department of Labor
Employees' Compensation Appeals Board**

CHERYL WALTON, Appellant

and

**U.S. POSTAL SERVICE, MAIN POST OFFICE,
Newark, NJ, Employer**

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**Docket No. 04-1005
Issued: July 13, 2004**

Appearances:
James D. Muirhead, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On March 8, 2004 appellant, through her attorney, filed a timely appeal from a nonmerit decision of the Office of Workers' Compensation Programs dated January 15, 2004 denying her request for reconsideration. Because more than one year has elapsed between the last merit decision dated February 20, 2003 and the filing of this appeal on March 8, 2004, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly refused to reopen appellant's claim for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 18, 1994 appellant, then a 30-year-old mail handler, filed a traumatic injury claim alleging that on that date she hurt her right foot when a hand jack rolled over on it.

Appellant stopped work on August 18, 1994 and she returned to limited-duty work on August 22, 1994. The Office accepted appellant's claim for a contusion of the right foot.

On February 10, 2002 appellant filed a claim alleging that she sustained a recurrence of disability in November 2001. By letter dated April 3, 2002, the Office advised appellant to submit a detailed description of her recurrence on November 1, 2001 and progress of her condition from the date she returned to work until the date of the alleged recurrence and medical evidence supportive of her claim. By copy of the April 3, 2002 letter, the Office requested that the employing establishment respond to appellant's comments and submit employment records including a copy of appellant's job description.

In response, the employing establishment submitted an April 10, 2002 letter controverting appellant's recurrence of disability claim on the grounds that she worked on November 19 and 20, 2001 without any pain or duress after her foot began to swell on November 16, 2001 and she did not file a claim. The employing establishment noted that appellant called in sick for two days on November 21, 2001 and she was subsequently given a light-duty assignment due to a nonjob-related injury based on her physician's recommendation. The employing establishment stated that appellant did not want to work in a new position that she had bid for and received, which required steady work. The employing establishment submitted a description of appellant's mail handler position, a March 26, 2002 form medical report from Dr. Robert W. Hutchinson, an employing establishment podiatrist, indicating a diagnosis of deep peroneal nerve neuritis and appellant's medical treatment and fair prognosis. In a form report dated March 28, 2002, Dr. Hutchinson provided appellant's physical restrictions.

By decision dated July 27, 2002, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on November 1, 2001 causally related to her August 18, 1994 employment injury. The Office stated that Dr. Hutchinson's March 26, 2002 report failed to address a casual relationship between appellant's current foot condition and her accepted employment injury. The Office further stated that appellant did not submit any factual statements.

On August 20, 2002 the Office received Dr. Hutchinson's July 30, 2002 report which diagnosed hallux abducto valgus, deep peroneal neuritis and plantar fasciitis, and appellant's medical treatment and need for surgery. The Office also received Dr. Hutchinson's July 31, 2002 form report providing appellant's physical restrictions. In an August 12, 2002 report, Dr. Hutchinson reviewed a history of appellant's August 1994 employment injury and medical treatment. He diagnosed deep peroneal neuritis and compression neuropathy of the intermediate dorsal cutaneous nerve. Dr. Hutchinson noted that appellant was waiting for clearance for time off from work to have decompression of the nerve and correction of the bunion on her right foot. He concluded that, as appellant's symptoms started soon after the work injury, it was likely that her symptoms were the result of the work injury. He stated that appellant did not have any foot complaints prior to the injury. Dr. Hutchinson noted that, if surgery was performed, appellant would need approximately six weeks of postoperative healing time during which she would be out of work with limited to no weight bearing potential. He stated that, following adequate healing time, appellant would be able to return to work without restriction.

On October 15, 2002 appellant requested reconsideration of the Office's July 27, 2002 decision and resubmitted Dr. Hutchinson's August 12, 2002 report. In a February 20, 2003 decision, the Office reissued the July 27, 2002 decision finding that appellant had failed to establish that she sustained a recurrence of disability on November 1, 2001 causally related to her August 18, 1994 employment injury. The Office reissued the July 27, 2002 decision to protect appellant's appeal rights since this decision was not mailed to appellant's correct address.

On June 16, 2003 appellant submitted a narrative statement describing her August 1994 employment injury and her continuing pain. She also described her alleged recurrence of disability and subsequent medical treatment. Appellant submitted Dr. Hutchinson's June 4, 2003 report, which reiterated the history of her August 1994 employment injury and medical treatment, diagnoses and opinion regarding the causal relationship between her current foot condition and her accepted employment injury verbatim as provided in his August 12, 2002 report.

In a December 11, 2003 letter, appellant, through her attorney, requested reconsideration of the Office's February 20, 2002 decision accompanied by Dr. Hutchinson's June 4, 2003 report and her narrative statement. By decision dated January 15, 2004, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was of a cumulative, repetitious, irrelevant and immaterial nature.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,¹ 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) constitute relevant and pertinent new evidence not previously considered by the Office.² 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.³ 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 of the merits.

ANALYSIS

The relevant issue in this case is a medical one, whether appellant sustained a recurrence of disability on November 1, 2001 that was causally related to her August 18, 1994 employment injury. In support of her request for reconsideration, appellant submitted Dr. Hutchinson's June 4, 2003 medical report. This report, however, contains identical information regarding the description of appellant's employment injury and medical treatment, diagnosis and opinion

¹ 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).

² 20 C.F.R. § 10.606(b)(1)-(2).

³ *Id.* at § 10.607(a).

regarding the causal relationship between appellant's current foot condition and her accepted employment injury as contained in Dr. Hutchinson's August 12, 2002 report, which was previously reviewed by the Office in its February 20, 2003 decision. 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.⁴ Inasmuch as Dr. Hutchinson's June 4, 2003 report is repetitious of his earlier report, it is insufficient to require a reopening of the case for a merit review.

For the foregoing reason, appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit any relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the January 15, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 13, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

⁴ See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).