

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ADA P. SUSONG and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Salisbury, N.C.

*Docket No. 95-2993; Submitted on the Record;
Issued January 27, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The case has previously been on appeal. In a decision dated September 6, 1990, the Board reversed the decisions of the Office dated March 8, 1990, December 21 and October 18, 1989, finding that the Office had failed to meet its burden of justifying termination of appellant's compensation benefits.¹ The Board found that in terminating benefits, the Office improperly relied on the opinion of an impartial medical specialist, Dr. Charles R. Lockert, a Board-certified orthopedic surgeon who, as it turned out, was not impartial because he had examined appellant approximately three months prior to the Office's referral of appellant to him. The history of the case is contained in the Board's prior decision and is incorporated by reference herein. The Office subsequently resumed paying appellant compensation benefits. The Office referred appellant to another impartial medical specialist, Dr. Gary L. Mangum, a Board-certified orthopedic surgeon, who opined on October 12, 1992 that appellant's current disability resulted from her preexisting degenerative disc disease, that the June 9, 1983 employment injury had temporarily aggravated appellant's preexisting condition but the aggravation had ceased, and appellant could perform light-duty work.

By decision dated May 9, 1994, the Office terminated appellant's compensation benefits on May 29, 1994 relying mainly on Dr. Mangum's October 12, 1992 opinion.

¹ Docket No. 90-1072 (unpublished).

By letter dated May 5, 1995, appellant requested reconsideration of the Office's May 9, 1994 decision and submitted additional medical evidence consisting of progress notes from Gaul Orthopedic Group dated July 18, 1989 through October 11, 1990 and a medical report from Dr. Leon A. Dickerson, a Board-certified orthopedic surgeon, dated April 25, 1995. The last progress note dated October 11, 1990 recommended physical therapy if possible but otherwise suggested appellant might have reached maximum medical improvement and would require work restrictions. In his April 25, 1995 report, Dr. Dickerson stated that appellant had been significantly restricted in what she could do due to her neck and he believed appellant's condition was permanent.

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.² As appellant filed the appeal with the Board on September 6, 1995, the only decision properly before the Board is the June 9, 1995 decision denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees' Compensation Act,³ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.⁴ Section 10.138(b)(2) provides that 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.⁵ 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.⁶ Evidence that does not address the particular issue involved, in this case whether appellant sustained a permanent aggravation to her cervical neck condition due to the June 9, 1983 employment injury, does not constitute a basis for reopening the case.⁷

The progress notes from Gaul Orthopedic Group dated July 18, 1989 to October 11, 1990 document the progress of appellant's cervical condition but do not address whether appellant's neck condition is causally related to her June 9, 1983 employment injury. They therefore are not relevant to this claim. Further, some of the progress notes are duplicative of previously submitted evidence. Dr. Dickerson's April 25, 1995 report stating that appellant's restrictions were due to her neck and that her neck condition was permanent is also duplicative of previously submitted evidence and therefore is not probative.

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

³ 5 U.S.C. § 8101 *et seq.*

⁴ 20 C.F.R. §§ 10.138(b)(1) and (2).

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁷ *Richard L. Ballard*, *supra* note 6 at 150; *Edward Mathew Diekemper*, 31 ECAB 224, 225 (1979).

Appellant has not established that the Office abused its discretion in its June 9, 1995 decision by denying appellant's request for a review on the merits of its May 9, 1994 decision under section 8128(a) of the Act, because she has failed to show that the Office erroneously applied or interpreted a point of law, that she advanced a point of law or a fact not previously considered by the Office or that she submitted relevant and pertinent evidence not previously considered by the Office.

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 9, 1995 is hereby affirmed.

Dated, Washington, D.C.
January 27, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member