

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHILIP B. SOE and DEPARTMENT OF THE NAVY,
NAVAL AIR REWORK FACILITY, Alameda, Calif.

*Docket No. 96-1989; Submitted on the Record;
Issued June 9, 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.

This case has been on appeal previously.¹ The facts and history surrounding the prior appeals are set forth in the prior decisions and orders and are hereby incorporated by reference.

In a request for reconsideration received by the Office on March 27, 1996, appellant alleged a lack of a preexisting cervical condition, and contested the denial of payment of further compensation benefits for residuals of his April 20, 1979 employment injury. Appellant submitted a form report documenting treatment to the back on September 21, 1978, as opposed to treatment for the cervical region. He also submitted a July 24, 1995 report from his attending physician, Dr. Robert Chow, a Board-certified neurosurgeon, who had treated him since August 1990. Dr. Chow noted that he "could not find any documents or history to prove" a preexisting cervical condition. With respect to appellant's treatment before the injury, he noted that the treatment was limited to the lumbosacral area. Dr. Chow stated, "[h]e has shown me that even though he was treated by a rheumatologist, Dr. Michael Neuwelt, it was essentially related to his lower back and the lumbosacral area."

By decision dated May 1, 1996, the Office denied appellant's request for a review of the merits of his claim, on the grounds that he neither raised substantive questions nor included new and relevant evidence which clearly establishes employment-related residuals.

The Board finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

¹ Docket No. 89-1491 (issued December 21, 1989); Docket No. 91-977 (issued May 18, 1992), *petition for recon. denied*, August 14, 1992; Docket No. 93-1517, order dismissing appeal (issued August 11, 1993); Docket No. 94-64 (issued June 26, 1995), *petition for recon. denied*, September 19, 1995.

Section 8128(a) of the Federal Employee's Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.² The Office, through its regulations, has imposed a one-year time limitation for a request of review to be made following a merit decision of the Office.³ 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 point of law, or (2) advancing a point of law or a fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ When 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 also does not constitute a basis for reopening a case.⁷ Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.⁸

Appellant has not submitted any new or relevant evidence to establish his claim for continued residuals due to the employment injury on April 17, 1979. While he submitted a form report from September 21, 1978 to document that his back treatment, the record contains other treatment notes from September 21, 1978 which report a two-year history of "right scapula region produced by rotating trunk." With respect to the additional report dated July 24, 1995 from Dr. Chow, the Board notes that Dr. Chow's report is repetitive. Dr. Chow provided no further information including a complete review and history of appellant's treatment for cervical condition, which was documented prior to his employment injury and addressed by prior physicians.⁹ Because appellant did not show that the Office erroneously applied or interpreted a point of law, nor did he advance a point of law or a fact not previously considered, or submit relevant and pertinent evidence not previously considered, the Board finds that the Office properly denied appellant's request for a review of his case.

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

³ 20 C.F.R. § 10.138(b)(2).

⁴ 20 C.F.R. § 10.138(b)(1).

⁵ *Id.* § 10.138(b)(2).

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁷ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁸ *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

⁹ The Board notes that appellant's initial treating physicians, Dr. Thomas F. Harter, a neurologist, and Dr. Donald C. Fink, a family practitioner, opined that it was possible that appellant's degenerative disc disease was aggravated by the April 17, 1979 employment injury. However, based on a conflict of opinion between appellant's initial physician's and an Office referral physician, Board-certified in orthopedic surgery, the Office referred appellant to a panel of a Board-certified orthopedic surgeon and Board-certified neurologist, who served as impartial medical specialists, to resolve the conflict in medical opinion. The Office terminated benefits by decision dated June 14, 1989, which was affirmed previously by the Board.

The decision of the Office of Workers' Compensation Programs dated May 1, 1996 is hereby affirmed.

Dated, Washington, D.C.
June 9, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member