

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GARY L. ALLEN and TENNESSEE VALLEY AUTHORITY,  
SEQUOYAH NUCLEAR PLANT, Soddy-Daisy, Tenn.

*Docket No. 97-2122; Submitted on the Record;  
Issued July 8, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs' denial of merit review in relation to appellant's request for reconsideration pursuant to section 8128 of the Federal Employees' Compensation Act constituted an abuse of discretion.

This case has previously been on appeal before the Board. By decision and order dated February 23, 1996, the Board affirmed the Office's decision dated July 1, 1993 and finalized on July 12, 1993, finding that the Office properly determined that appellant forfeited his right to compensation in the amount of \$24,858.64 for the period of December 15, 1989 to March 15, 1991 for knowingly failing to report earnings, properly determined that there had been an overpayment in compensation and properly found that appellant was at fault in the matter of the overpayment. The facts and circumstances of the case are completely set out in that decision and are hereby incorporated by reference.<sup>1</sup>

In an undated letter forwarded by facsimile on February 21, 1997, appellant through counsel requested reconsideration and reversal of the Office's determination that he had forfeited his right to compensation for the period of December 15, 1989 to March 15, 1991. Counsel alleged that fraudulent intent was not clearly demonstrated as subsequent medical examinations did not reveal that appellant's condition had materially improved since his initial injury. Appellant submitted medical report evidence to substantiate his contention that his condition had not improved. In a decision dated March 13, 1997, the Office denied appellants' request for reconsideration on the grounds that the evidence submitted was cumulative in nature and was not sufficient to warrant merit review of its prior decision.

The Board has duly reviewed the case record on appeal and finds that the Office properly denied appellant's request for reconsideration.

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<sup>1</sup> Docket No. 93-2448 (issued February 23, 1996).

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. 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 requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>2</sup> 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.<sup>3</sup> Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>4</sup>

In the present case, counsel for appellant argues that fraudulent intent was not established because appellant's medical condition had not materially improved since his initial injury. However, the Office found that appellant was at fault in the creation of the overpayment on the grounds that he failed to report his self-employment earnings. Appellant's medical condition and alleged lack of improvement, is not relevant to this issue. Thus, the argument posed by appellant and the medical evidence submitted is cumulative and immaterial to the central issues of this case. The Office properly denied appellant's request for reconsideration and merit review of his claim.

The decision of the Office of Workers' Compensation Programs dated March 13, 1997 is hereby affirmed.

Dated, Washington, D.C.  
July 8, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>2</sup> 20 C.F.R. § 10.138(b)(2).

<sup>3</sup> *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

<sup>4</sup> *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).