

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of IRENE L. THOMAS and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Miami, FL

*Docket No. 98-1406; Submitted on the Record;  
Issued April 3, 2000*

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DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs abused 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); and (2) whether the Office properly denied appellant's claim for compensation based on wage loss from June 14 to August 9, 1995.

Appellant, a 42-year-old clerk, strained her left shoulder on December 12, 1989 while reaching for a bundle of magazines. She filed a claim for benefits on December 15, 1989, which the Office accepted for a left rotator cuff sprain. Appellant subsequently filed claims for compensation based on loss of wages for intermittent periods, for which the Office paid her compensation for appropriate periods.<sup>1</sup>

By memorandum dated September 14, 1994, the Office indicated that it would pay appellant compensation based only on her accepted left shoulder injury and would deny claims for wage loss or medical treatment attributable to a cervical condition, which it had not accepted as causally related to the December 12, 1989 employment injury.

By letter dated November 9, 1994, appellant requested reconsideration of the Office's denial of compensation based on a cervical condition. By letter dated December 1, 1994, the Office informed appellant that it had not accepted a cervical condition as causally related to the December 12, 1989 work injury and advised her that she was required to submit additional medical evidence in support of such a claim, including a comprehensive medical report.

By decision dated April 3, 1995, the Office denied appellant's claim, finding that she failed to submit medical evidence sufficient to establish that the claimed cervical condition was causally related to the accepted December 12, 1989 employment injury.

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<sup>1</sup> By decision dated July 8, 1994, the Office accepted, on reconsideration, appellant's claim for compensation based on loss of wages from March 9 through April 15, 1994.

By letter dated May 2, 1995, appellant requested a review of the written record.

Appellant returned to work with the employing establishment as a distribution clerk on July 19, 1995.

By decision dated August 9, 1995, the Office affirmed its April 3, 1995 decision.

By letter dated January 31, 1996, appellant requested reconsideration.

By decision dated April 4, 1996, the Office denied reconsideration, finding that appellant did not submit medical evidence sufficient to warrant modification.

By letter dated June 27, 1996, appellant's attorney requested reconsideration.

By decision dated August 7, 1996, the Office denied reconsideration, finding that appellant did not submit medical evidence sufficient to warrant modification.

In a letter received by the Office on September 12, 1996, appellant's attorney requested reconsideration.

By decision dated October 23, 1996, the Office denied reconsideration, finding that appellant did not submit medical evidence sufficient to warrant modification.

On October 8, 1997 appellant requested compensation for loss of wages for the period September 20 through September 25, 1997.

By letter dated October 20, 1997, appellant's attorney requested reconsideration of the Office's October 23, 1996 decision. In support of her claim, appellant submitted a June 23, 1997 report from Dr. Michael B. Wittels, a Board-certified orthopedic surgeon. Dr. Wittels stated:

“[E]xamination of [appellant] revealed that she had radicular pain and problems into her cervical spine extending from the pain and problems in her shoulder due to her injury. She had severe pain and problems in her shoulder blade and cervical spine areas.... At this time [appellant] continues to have persistent pain and problems in her shoulder with radicular symptoms into her cervical spine and down her left arm. I feel that based on the facts that [she] presented to me, she had no previous symptoms prior to this incident. [Appellant] has had cervical and shoulder problems since the injury date of [December] 12, 1989. Her cervical pain and radiculopathy are indeed related to her [employment] injury on the aforementioned date.”

Appellant also submitted numerous medical reports which she had submitted with previous requests for reconsideration.

By decision dated January 6, 1998, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

By decision dated March 9, 1998, the Office found that appellant was not entitled to compensation for wage loss claimed for the period September 20 to September 25, 1997. The Office stated that the medical evidence most contemporaneous to the period for which appellant was requesting compensation was Dr. Wittel's September 19, 1997 report, which held her out of work due to her cervical condition, a condition not accepted by the Office.

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 her claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law; by advancing a point of law or fact not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.<sup>2</sup> 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.<sup>3</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>4</sup>

In the present case, appellant has not shown that the Office erroneously applied or interpreted a point of law; she has not advanced a point of law or fact not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. Although appellant submitted Dr. Wittel's July 23, 1997 report with her request for reconsideration, this report is cumulative and repetitive because it essentially reiterates previous medical reports which indicated that appellant's cervical symptoms were causally related to her accepted December 12, 1989 left rotator cuff injury, all of which were rejected by the Office in previous decisions. Thus, appellant's request did not contain any new and relevant medical evidence for the Office to review. This is important since the outstanding issue in the case -- is whether the claimed cervical condition was causally related to the accepted December 12, 1989 left shoulder injury -- was medical in nature. All the other medical evidence submitted by appellant was previously of record and considered by the Office in reaching prior decisions.

Additionally, the October 20, 1997 letter from appellant's attorney did not 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. Although appellant generally contended that her cervical condition was causally related to her accepted December 12, 1989 left shoulder injury, she failed to submit new and relevant medical evidence in support of this contention. 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 January 6, 1998 decision.

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<sup>2</sup> 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.138(b)(2).

<sup>4</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

Lastly, the Board finds that the Office properly denied appellant's claim for compensation based on wage loss from September 20 to 25, 1998, as the Office properly found that the period for which appellant was claiming compensation for wage loss was based on treatment for a nonaccepted medical condition.

The decisions of the Office of Workers' Compensation Programs dated March 9 and January 6, 1998 are hereby affirmed.

Dated, Washington, D.C.  
April 3, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member