

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEANETTE C. JORDAN and DEPARTMENT OF THE AIR FORCE,
TACTICAL AIR COMMAND, MYRTLE BEACH AIR FORCE BASE, SC

*Docket No. 98-1072; Submitted on the Record;
Issued February 9, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128.

In this case, the Office accepted that appellant sustained a back strain on November 19, 1988 during the performance of her duties. Appellant returned to work from April 10 to April 20, 1989 and worked four hours a day. On April 23, 1989 the Office began paying appropriate benefits for wage loss. By decision dated October 20, 1989, the Office denied benefits on and after September 25, 1989 on the basis that appellant did not have any disability causally related to her November 19, 1988 work injury after that date. Following a request for a hearing, an Office hearing representative, in a decision dated July 13, 1990, affirmed the Office's finding that the medical evidence established that appellant's disability was no longer related to the work-related injury of November 19, 1988. Thereafter the Office denied modification of its prior decision in decisions of July 23, 1991 and September 1, 1992. On January 25, 1993 the Director, on her own motion as provided in section 8128, vacated the September 1, 1992 decision and directed a complete review of the merits of the case. The Director found that a response from a physician had been received by the Office but was not in the case record when the claims examiner made his decision. The Director further noted that there was a December 1, 1992 report from Dr. Staton concerning appellant's emotional condition.

By decision dated April 26, 1993, the Office denied compensation benefits finding that the evidence of record did not establish that the work injury of November 19, 1988 resulted in disability for work on and after September 25, 1989. The Office noted that any psychiatric limitations were on a prophylactic basis and any psychiatric condition was not shown to directly cause appellant's disability for work. Thereafter the Office denied modification of its prior decisions in an October 12, 1993 decision.

In a decision dated June 24, 1994, the Office denied appellant's request for a hearing as appellant previously requested reconsideration and found that the matter could be further pursued through the reconsideration process.

In a decision dated April 18, 1995, the Office denied appellant's request for reconsideration on the grounds that it was untimely filed and failed to demonstrate clear evidence of error. The Office denied merit review of the claim on August 15, 1995. By decision dated September 27, 1996, the Office denied modification of its prior decisions. The Office denied merit review of the claim on September 26, 1997.

The Board finds that the Office properly refused to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128.

The only decision before the Board on this appeal is the September 26, 1997 Office decision which found that appellant, in her request for reconsideration, had not submitted sufficient evidence to warrant review of the Office's October 20, 1989 decision. Since more than one year has elapsed between the issuance of the October 29, 1989, July 13, 1990, July 23, 1991, September 1, 1992, April 26 and October 12, 1993, June 24, 1994, April 18 and August 15, 1995, and September 27, 1996 decisions and December 24, 1997, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review those decisions and, thus, lacks jurisdiction over the merits of the case.¹

To require the Office to reopen a case for reconsideration, section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides in relevant part that a claimant may obtain review of the merits of his claim by written request to the Office identifying the decision and specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

“(i) Showing that the Office erroneously applied or interpreted a point of law, or

“(ii) Advancing a point of law or fact not previously considered by the Office, or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”²

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.³ 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 whether to reopen

¹ See 20 C.F.R. § 501.3(d)(2).

² 20 C.F.R. § 10.138(b)(1).

³ 20 C.F.R. § 10.138(b)(2).

a case for further consideration under section 8128 of the Federal Employees' Compensation Act.⁴

In support of her September 23, 1997 reconsideration request to the Office, appellant argued that the Office erred in deciding that there was insufficient evidence to show that appellant's current disability was not causally related to her work-related injury. She asserted that the decision is erroneous because it unreasonably discards the previously submitted medical opinions, medical reports and magnetic resonance imaging reports, which document the protruding disc injury. She further argued that, in addition to the previously submitted evidence of the disc injury and resulting pain, Dr. M. Alexander Staton, a Board-certified psychiatrist, had opined that she also suffers from mental depression as a direct result of the pain from the work-related injury. Previously submitted medical reports from Dr. Staton dated February 19, 1990 and August 30, 1991 were included with appellant's reconsideration request.

In the instant case, appellant's request for reconsideration fails to establish a sufficient evidentiary basis for reopening her claim. Appellant did not present any legal contentions not previously considered; he merely contended that the Office unreasonably disregarded the medical evidence of record in finding that appellant's disability was not causally related to her work-related injury. This unsupported contention fails to provide an evidentiary basis for reopening appellant's claim as it fails to identify the grounds upon which counsel believes the Office was "unreasonable." Moreover, the record reflects that appellant had previously submitted the February 19, 1990 and August 30, 1991 reports from Dr. Staton before the Office, which found the reports to be of little probative value in decisions dated July 23, 1991 and April 26, 1993. The submission of evidence or argument which repeats or duplicates evidence or argument already considered by the Office has no evidentiary value and does not constitute a basis for reopening a case for further review on the merits.⁵

Accordingly, appellant did not provide a sufficient evidentiary basis for reopening her claim, and the Office properly employed its discretion in refusing to reopen the case for further review on the merits.⁶

⁴ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁵ *Saundra B. Williams*, 46 ECAB 546 (1995).

⁶ *Jimmy O. Gilmore*, 37 ECAB 257, 262 (1985).

The Office of Workers' Compensation Programs' decision dated September 26, 1997 is affirmed.

Dated, Washington, D.C.
February 9, 2000

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member