

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID McMILLEN and DEPARTMENT OF THE ARMY,
MAINTENANCE DIVISION, Fort Sheridan, IL

*Docket No. 98-1475; Submitted on the Record;
Issued February 1, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On April 17, 1986 appellant, then a mobile equipment metal mechanic, was lifting a battery box when he developed pain in his lower back. He stopped working on April 18, 1986 and returned to work on April 28, 1986, receiving continuation of pay for the period he did not work. On November 12, 1986 appellant was lifting a sledgehammer to repair a dent in a fender when he again developed low back pain. Appellant stopped working that day and returned to light-duty work on November 18, 1986. The Office accepted appellant's claim for lumbosacral strain and subluxation of L6. On August 8, 1988 appellant was assigned to a lower grade position as a supply clerk but was placed on pay retention at the rate of his previous position. On March 19, 1992 appellant filed a claim for loss of wage-earning capacity for the period after August 16, 1988 on the grounds that he was receiving less pay currently than he would have received if he had remained in his former position. In an August 11, 1992 decision, the Office rejected appellant's claim on the grounds that the evidence of record did not establish entitlement to compensation for a loss of wage-earning capacity. In an August 26, 1992 letter, appellant requested a hearing before an Office hearing representative which was conducted on May 25, 1993. In an October 13, 1993 decision, the Office hearing representative affirmed the Office's denial of compensation for a loss of wage-earning capacity. On May 29, 1993 appellant's position with the employing establishment was terminated due to a reduction-in-force.

In a May 5, 1996 letter, appellant sought compensation for the period after May 29, 1993. In an October 17, 1996 decision, the Office terminated appellant's entitlement to compensation effective April 8, 1992 on the grounds that the medical evidence of record showed that his disability due to the November 12, 1986 employment injury had ceased by that date. In an October 8, 1997 letter, appellant requested reconsideration of the Office' October 17, 1996 decision. In a January 7, 1998 decision, the Office denied appellant's request for reconsideration

on the grounds that the evidence submitted in support of the request was cumulative, repetitious and immaterial and therefore, insufficient to warrant review of the prior decision.

The Board finds that the Office properly denied appellant's request for reconsideration.

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 three requirements, the Office will deny the application for review without reviewing the merits of the claim.¹ 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.² Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.³

The Office based its decision on the April 8, 1992 report of Dr. Jeffrey Meisles, a Board-certified orthopedic surgeon, who concluded that appellant's lumbar strain had resolved and that appellant was not suffering from any identifiable pathology. In his request for reconsideration, appellant submitted numerous reports and other evidence that had been submitted previously. Appellant also submitted a detailed description of the history of his claim, arguing that the report of Dr. Meisles was not sufficient to show that he was no longer disabled, particularly as subsequent reports showed chronic problems. However, all the evidence submitted by appellant had been considered by the Office prior to its October 17, 1996 decision. Appellant argued that the medical evidence, particularly the reports of Dr. L.C. Semmerling, a chiropractor, Dr. David A. Fetter, a Board-certified orthopedic surgeon and Dr. Reuben R. Weisz, a Board-certified neurologist, showed his condition remained chronic. This argument is unavailing because the Office, at the time of the October 17, 1996 report, had reviewed the medical evidence cited by appellant and pointed out that the reports of Dr. Fetter and Dr. Weisz did not specifically relate appellant's conditions to either the April 17 or November 12, 1986 employment injuries and the reports of Dr. Semmerling lacked any rationale in support of his opinion on causal relationship. Appellant did not submit any new, relevant medical evidence that extensively reviewed his current medical condition, gave the diagnosis of his condition, related his condition to the employment injuries and gave a physiological explanation on how his current condition was related to employment injuries that occurred approximately 10 years prior to the Office's October 17, 1996 decision. The evidence and arguments submitted by appellant, therefore, were repetitive or duplicative of evidence and arguments already considered by the Office. The evidence submitted by appellant was insufficient to require the Office to conduct a merit review of its October 17, 1996 decision.

The decision of the Office of Workers' Compensation Programs dated January 7, 1998 is hereby affirmed.

¹ 20 C.F.R. 10.138(b)(2).

² *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

³ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

Dated, Washington, D.C.
February 1, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member