

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERALD LYNN FOSTER and SELECTIVE SERVICE SYSTEM,
DATA MANAGEMENT CENTER, Great Lakes, IL

*Docket No. 99-746; Submitted on the Record;
Issued February 14, 2000*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

On August 7, 1996 appellant, then a 36-year-old data transcriber, filed a claim for repetitive stress injury, fibromyalgia and possible carpal tunnel syndrome. She indicated that she had pain in the upper neck, shoulders and lower back. She related her conditions to the repetitive tasks she performed in her job, dating back to July 1991, which involved sitting from 6:30 a.m. to 3:00 p.m. Appellant had stopped working on July 5, 1996. In an August 12, 1997 letter, the Office accepted appellant's claim for fibromyalgia and began payment of temporary total disability compensation. In an August 13, 1997 decision, the Office accepted appellant's claim for compensation for intermittent periods between July 15, 1991 and December 30, 1996 but denied appellant's claim for other intermittent periods of disability on the grounds that she had not submitted medical evidence establishing that she was disabled due to employment-related conditions. In an August 11, 1998 letter, appellant requested reconsideration. In a September 8, 1998 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was repetitive and therefore insufficient to warrant review of the prior decision.

Appellant's appeal was filed with the Board on November 30, 1998. The Board's jurisdiction is limited to final decisions of the Office issued within one year prior to the filing of an

appeal with the Board.¹ The Board therefore can only consider the Office's September 8, 1998 decision is this appeal.²

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

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant. 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.³ 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.⁴ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁵

In an August 13, 1996 report, Dr. David D. Soo, a Board-certified family practitioner, stated that appellant had fibrositis and fibromyalgia. He noted that x-rays and laboratory examinations were normal. Dr. Soo indicated, however, that appellant continued to have episodic pain and discomfort in her extremities and upper and lower back areas. He commented that appellant's condition could be aggravated by her employment, particularly prolonged, repetitive activity of her extremities or heavy lifting, pushing or pulling. He submitted a copy of a July 26, 1996 electromyogram (EMG) which was normal, showing no sign of carpal tunnel syndrome or neuropathy. Dr. Soo's report, while setting forth a causal relationship between appellant's fibromyalgia and her work, did not provide any explanation on how repetitive motion would cause or aggravate appellant's fibromyalgia to the point that she would be unable to work.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Robert Katz, a Board-certified rheumatologist, for an examination and second opinion. In a May 9, 1997 report, Dr. Katz indicated that appellant complained of diffuse pain in her legs, arms, neck and shoulders and had paresthesias of the low back, neck and shoulders. He noted her diagnosis of fibromyalgia. He stated that appellant's history of widespread musculoskeletal pain, dating back approximately seven years, along with insomnia, fatigue, intermittent paresthesias, headache and tender points on her muscles in examination with lack of any finding of inflammatory joint disease, suggested the diagnosis of fibromyalgia. Dr. Katz did

¹ 20 C.F.R. § 501.3(d)(2).

² The record submitted on appeal contains a December 30, 1998 decision by the officer terminating appellant's temporary total disability compensation. That decision deals with a different issue that does not affect the current case on appeal and therefore is not before the Board in this appeal.

³ 20 C.F.R. § 10.138(b)(2).

⁴ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁵ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

not discuss whether appellant's condition was causally related to her employment. He only discussed the options on how to modify appellant's job to accommodate her condition.

In its August 13, 1997 decision, the Office noted that, while it had approved compensation for some dates appellant did not work between July 15, 1991 and December 30, 1996, it did not approve compensation for other dates because appellant had not submitted sufficient medical evidence to substantiate disability for those dates. The Office indicated that Dr. Soo had submitted brief notes indicating that appellant was unable to work but had not discussed a diagnosis or a treatment for appellant's condition. The Office concluded that these notes therefore had limited probative value in establishing employment-related disability for the dates in question.

In her request for reconsideration, appellant submitted an April 17, 1998 report from Dr. Soo in which he recommended that appellant participate in an evaluation of myofascial relief as other, more conservative, forms of therapy for her fibromyalgia and repetitive stress injury had failed. She submitted a July 27, 1998 report from Dr. Soo in which he stated appellant should undergo additional therapy before participating in vocational rehabilitation. Appellant also submitted notes relating to physical therapy that she received between May 18 and July 20, 1998. These reports pertain only to appellant's disability and therapy in 1998 and therefore are irrelevant to the issue of whether she was entitled to compensation for intermittent periods of disability between July 15, 1991 and December 30, 1996. Appellant has not submitted any evidence that would establish that she had intermittent employment-related disability during the period at issue in this case for dates for which the Office had not approved compensation. The Office therefore properly denied her request for reconsideration.

The decision of the Office of Workers' Compensation Programs dated September 8, 1998 is hereby affirmed.

Dated, Washington, D.C.
February 14, 2000

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member