

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK CLARKE and U.S. POSTAL SERVICE,
BURBANK POST OFFICE, Burbank, CA

*Docket No. 99-1128; Submitted on the Record;
Issued October 3, 2000*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI
VALERIE D. EVANS-HARRELL

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

On July 23, 1986 appellant, then a 38-year-old letter carrier, was delivering mail to a set of boxes when part of the set fell, landing on his right foot. Appellant fell backward, striking his lower back on a guard rail. The Office accepted appellant's claim for contusions of the right foot and lower back and subsequently accepted his claim for adjustment disorder with depressed mood. He received continuation of pay for the period August 7 through September 20, 1986 and began receiving temporary total disability compensation effective September 21, 1986.

In a March 20, 1989 report, Dr. Victor Richards, a Board-certified surgeon, reported that appellant gave a history of an alleged consequential injury on December 30, 1987 when he fell from his bed, raised himself from the floor using a cane and then felt a pop in his right groin area. Appellant subsequently underwent surgery for a right inguinal hernia. Dr. Richards concluded that the incident did not cause the hernia but brought forth awareness of a hernia in the region. In a July 29, 1989 report, Dr. Daniel C. Belden, a surgeon, related that appellant gave a history of reaching for something in a cupboard on October 24, 1987 when he lost his balance and fell. When attempting to rise, using a cane, appellant reported feeling a pop in his groin but did not feel a bulge until several days later. Dr. Belden noted that appellant underwent hernia repair surgery. Dr. Belden stated that the inguinal hernia was not a consequential injury related to the July 22, 1986 back injury.

In a November 24, 1989 decision, the Office terminated appellant's compensation on the grounds that he suffered no further residuals from the July 22, 1986 employment injury. Appellant requested a hearing before an Office hearing representative. In a February 26, 1990 decision the hearing representative, without a hearing, set aside the Office's November 24, 1989 decision on the grounds that the Office had not met its burden of proof in terminating appellant's compensation due to a conflict in the medical evidence. He also found that the medical evidence

of record needed to be developed further to determine whether appellant's right inguinal hernia was a consequence of the July 22, 1986 employment injury.

In a December 9, 1996 decision, the Office terminated appellant's compensation on the grounds that he no longer suffered residuals of the July 22, 1986 employment injury. The Office further found that appellant's hernia was not causally related to the accepted employment injury. Appellant requested a review of the written record by an Office hearing representative. In a September 3, 1997 decision, the second Office hearing representative found that the Office had not met its burden of proof in terminating compensation. He found, however, that appellant had not met his burden of proof in establishing that his hernia was causally related to his employment injury.

In a September 3, 1998 letter, appellant requested reconsideration of the portion of the hearing representative's decision which denied his claim for his inguinal hernia. In an October 26, 1998 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence and arguments he submitted in support of the request were insufficient to warrant review of the Office's September 3, 1997 decision.

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 As appellant's appeal was filed on February 3, 1999, the Board's jurisdiction is limited to the Office's October 26, 1998 decision.

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.² 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.³ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁴

Appellant contended that the report of Dr. Ajit S. Arona, a Board-certified internist acting as an impartial medical specialist, whose report was the basis for the denial of appellant's claim

¹ 20 C.F.R. § 501.3(d)(2).

² 20 C.F.R. § 10.138(b)(2).

³ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁴ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

for the inguinal hernia, was based on an inaccurate history given by Dr. Richards. However, Dr. Arona, in his October 26, 1996 report, gave the history given previously by Dr. Belden, that appellant was reaching for something when he fell and sustained a hernia, not the history given by Dr. Richards. Appellant argued that Dr. Arona's statements were taken out of context and were misapplied to disallow his claim. A review of Dr. Arona's report shows that he fully agreed with the reports of Dr. Richards and Dr. Belden that appellant's inguinal hernia was not caused by the incident he described of reaching for medicine and falling. Dr. Arona clearly concluded that appellant's hernia was not causally related to this particular incident but developed over time. Dr. Arona's report, therefore, was not taken out of context or misinterpreted by the Office in denying appellant's claim that the inguinal hernia was a consequential injury due to the July 22, 1986 employment injury. Appellant's arguments therefore have no legal color of validity and, therefore, are insufficient to require a review of the Office's September 3, 1997 decision.⁵

Appellant submitted a copy of March 30, 1990 note from Dr. Haile T. Debas, who stated that it was possible to have a small defect in the abdominal wall through which a herniation can occur without a hernia being visible. He also commented that it would be possible for a hernia to appear and disappear without causing any symptoms or being noticed by the patient. Dr. Debas indicated that increased extra abdominal pressure as a result of either an external force or constipation, excessive coughing, straining at urination, or because of the pressure of intestinal tumor could cause a sudden appearance or enlargement of an inguinal hernia. The Office found that the report was repetitive as it had been submitted previously. A review of the record does not show that the report was submitted previously or was reviewed either by Dr. Arona, by the Office in its December 9, 1996 decision or by the Office hearing representative in the September 3, 1997 decision. Dr. Debas's statements, however, are general in nature with no reference to the particular facts of this case, especially the history of injury as give by appellant. It has no application to the issue of this case, whether appellant developed an inguinal hernia as a consequence of this July 23, 1986 employment injury. Dr. Debas's report, therefore, is irrelevant to this case and cannot form the basis for a review of appellant's claim on the merits.

⁵ *Constance G. Mills*, 40 ECAB 317 (1988).

The decision of the Office of Workers' Compensation Programs dated October 26, 1998, is hereby affirmed.

Dated, Washington, DC
October 3, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member