U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA L. JOHNSON and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, North Chicago, IL

Docket No. 00-1464; Submitted on the Record;
Issued March 27, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant had any disability for work or injury residuals requiring further medical treatment after September 24, 1998, causally related to her March 2, 1983 employment injuries; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for further review of her case on its merits under 5 U.S.C. § 8128(a).

The Office accepted that on March 2, 1983 appellant, then a 35-year-old nurse's aide, sustained a paraspinal muscle strain of the left back and "lumbar disc syndrome," as she attempted to catch a falling patient and hit a rail. Concurrent disability not due to her employment injury was noted to include diabetes mellitus, hypertension, coronary artery disease with an angioplasty, obesity, sinus and urinary tract infections.

Appellant was placed on the periodic rolls for receipt of compensation. Over the ensuing years appellant continued to submit medical reports from various treating physicians, which supported her total disability status due to back pain. Electromyography (EMG) performed on April 19, 1990 was reported by Dr. Galo L. Tan, a Board-certified neurologist, as demonstrating bilateral median carpal tunnel syndrome associated with diabetes mellitus. He noted that appellant's neuropathic, cervical lumbosacral myofascitis was not getting worse. Cervical-lumbosacral strain without radiculopathy was diagnosed. On May 20, 1991 Dr. Peter Chhabria, a Board-certified neurologist, noted that appellant's magnetic resonance imaging (MRI) scan of the lumbar spine done in September 1989 was reported as being normal. Severe diabetic peripheral neuropathy was diagnosed, which resulted in numbness of appellant's feet. On January 13, 1992 Dr. Tan noted that EMG testing revealed cervical lumbosacral strain with radiculopathy, severe polyneuropathy and median carpal tunnel syndrome, probably diabetic related. On May 6, 1992 he noted that "the problem of cervical and lumbosacral radiculopathy with spondylosis versus neuromyopathy and polyneuritis has to be established." Dr. Tan opined that EMG testing revealed mild sensory polyneuritis and bilateral median carpal tunnel syndrome.

On June 10, 1992 the Office noted that appellant also had three nonwork-related injuries since March 2, 1993, including a fall at a department store in 1984, an auto accident on June 27, 1986 where she sustained head, neck and left arm injury and a June 8, 1990 fall from a dentist's chair injuring the right side of her head and neck.

On November 5, 1992 an Office medical adviser noted that none of appellant's medications were causally related to the work injury 10 years earlier and that her current problems appeared to be related to complications of diabetes, further complicated by inappropriate over medication.

On August 5, 1993 Dr. Tan reported that appellant was totally disabled. However, based upon an August 18, 1993 EMG he diagnosed diabetic neuropathy and no radiculopathy. On April 6, 1995 Dr. Tan again opined that appellant was totally disabled and needed continued treatment due to all of her conditions. On June 4 and 21, 1996 he reiterated that appellant was insulin-dependent diabetic with extensive sensory, had polyneuropathy in both legs with numbness, paresthesia and dysesthesia, pain, numbness and paresthesia in both hands, bilateral median carpal tunnel syndrome, neck and low back pain with sciatica, coronary artery disease with angioplasty and a history of frequent chest pain and shortness of breath. He found the patient totally, medically and neurologically disabled.

On June 17, 1997 Dr. Shaku P. Chhabria, a Board-certified neurologist, reviewed appellant's myriad of complaints and diagnosed chronic lumbar syndrome with possible herniated discs versus facet arthritis. On October 10, 1997 Dr. Chhabria noted that appellant was symptomatic with radicular symptoms in the legs.

On January 16, 1998 Dr. Chhabria noted that appellant continued with chronic low back pain and a herniated disc. On February 24, 1998 Dr. Chhabria noted that appellant had ongoing symptoms related to her diabetes. On March 26, 1998 Dr. Chhabria stated that appellant had chronic low back pain secondary to a work-related injury with a marked degree of radicular symptoms in the legs, however, nerve conduction velocity testing on April 9, 1998 was reported by Dr. Chhabria as demonstrating evidence of peripheral neuropathy characterized by denervation in the peripheral muscles with fibrillations and increased polyphasic waves. She noted, however, that underlying radiculopathy could not be ruled out.

On April 21, 1998 the Office prepared a statement of accepted facts and referred appellant, the statement of accepted facts, questions to be addressed and the relevant case record to Dr. Julie M. Wehner, a Board-certified orthopedic surgeon, for a second opinion evaluation.

By report dated May 13, 1998, Dr. Wehner reviewed appellant's factual and medical history and noted upon examination that her back was straight, she had no significant paraspinal spasm, her gait was slow but normal, she could slowly walk on her heels and toes, she could sit comfortably in bed and that her hip range of motion was without pain. Dr. Wehner noted that EMG studies done on November 11, 1986 by Dr. Chhabria showed normal nerve conduction and that a lumbar spine MRI scan from September 27, 1989 showed a normal lumbar spine. She further noted that a computerized tomography (CT) scan done on January 10, 1986 showed mild disc bulging at L5-S1, which was less than that shown on a February 6, 1985 scan and some mild facet arthritis at L5-S1 was appreciated. Dr. Wehner opined that appellant had suffered lumbar sprain in her work-related injury, which was active for approximately three months and that her

present state of disability was due more to her diabetes and other medical problems. She found no objective findings to suggest that a strain was still active and noted that appellant self-limited herself and was obviously deconditioned. Dr. Wehner found no medical connection between appellant's 1983 injury and her current condition and noted that appellant's current disability was related to her diabetes. She noted that appellant's MRI scan was obviously normal and, therefore, appellant had no canal lesion such as a herniated disc to cause continued left leg pain and that, accordingly, appellant's leg pain, despite normal EMGs, was most likely related to appellant's diabetes. Dr. Wehner opined that appellant was capable of performing the physical requirements of a nurses aide, if one did not consider her other noninjury-related conditions. She noted that a lumbar strain did not require significant restrictions 15 years afterward and that appellant's disability at the present time existed because of her diabetes. Dr. Wehner opined that no further medical treatment or diagnostic studies needed to be done with regard to the 1983 lumbar sprain and that appellant had no significant injury-related lesions to warrant any work restrictions.

The Office then determined that a conflict in medical opinion evidence had arisen between appellant's treating physician, Dr. Chhabria and the Office second opinion specialist, Dr. Wehner, as to whether appellant had any further disability for work or injury-related residuals requiring further medical treatment, causally related to her 1983 soft tissue muscle strain injury or "lumbar disc syndrome."

On June 3, 1998 the Office referred appellant, a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Richard A. Geline, a Board-certified orthopedic surgeon, for an impartial medical evaluation to resolve the existing conflict.

A June 26, 1998 report of another MRI scan indicated as follows: "No pathologic enhancement is appreciated. Alignment is anatomic. There is normal signal intensity within all of the intervertebral discs. There is no focal disc hernia or disc bulging. No central or foraminal compromise is present. The facet joints are normal. The conus medullaris is unremarkable. Bone marrow signal intensity is unremarkable."

By report dated August 12, 1998, Dr. Geline reviewed appellant's factual and medical history, noted her present complaints, performed a complete and thorough physical examination and diagnosed a contusion of the lumbar spine, degenerative arthritis of the lumbar spine, diabetes mellitus and diabetes-related peripheral neuropathy. Dr. Geline opined that no residuals of appellant's 1983 injury existed and that her original injury could have been expected to have resolved within three months of the original incident. He noted that appellant's subsequent symptoms would not be related to the 1983 incident. Dr. Geline opined that appellant's current condition was not related to the 1983 injury and that her leg pain was related to her diabetic neuropathy. He opined that appellant was capable of performing the tasks normally associated with a nursing assistant, based upon the absence of physical findings or radiographic findings. Dr. Geline completed a work restriction evaluation indicating that appellant could work eight hours per day with lifting limits and he opined that further treatment for the lumbar spine was not indicated.

On August 24, 1998 the Office sent appellant a notice of proposed termination of compensation on the grounds that the weight of the medical opinion evidence of record established that she had no further disability for work or injury residuals requiring further

medical treatment, causally related to her 1983 employment injuries. The Office advised appellant that the conflict in medical opinion had been resolved by the well-rationalized report of Dr. Geline, the impartial medical examiner. It noted that, although Dr. Chhabria indicated that appellant continued to be symptomatic due to a herniated disc, objective radiographic evidence including MRIs and CT scans demonstrated that no such disc herniation existed, such that Dr. Chhabria's opinion was of diminished probative value as it was not based on or supported by objective evidence. It advised that if she disagreed with the proposed action, she had 30 days within which to submit further evidence or argument supporting her continuing injury-related disability.

By letter dated September 5, 1998, appellant objected to the proposed termination and argued that the Office did not have all of the relevant reports. In support appellant submitted a July 27, 1998 report from Dr. Chhabria, which noted that a recent MRI scan did not show any herniated disc and that appellant continued to have chronic pain with "charlie-horse" cramps in the calves and she diagnosed lumbar radiculopathy and diabetic neuropathy. Appellant also submitted hospital medical treatment records dating from 1998 and continuing.

By decision dated September 24, 1998, the Office finalized the proposed termination of compensation finding that the weight of the medical evidence of record established that appellant had no disability for work or injury residuals requiring further medical treatment after September 24, 1998, causally related to her March 2, 1983 employment injuries. The Office found that the well-rationalized report of Dr. Geline, which was based on a proper factual and medical background, constituted the weight of the medical evidence of record.

Appellant requested reconsideration arguing that Dr. Chhabria did not have accurate knowledge of her condition, that she was not given a time extension she requested and that her lumbar pain was running her blood pressure up. In support of her request appellant submitted medical billing statements and a January 30, 1999 CT scan report, which revealed "[m]ild hypertrophic degenerative change of lumbosacral spine [and] right facet joint arthritis at L4-5 and L5-S1. Also submitted were several reports from Dr. Chhabria dating from September 1, 1998 to January 4, 1999. Dr. Chhabria opined that appellant had symptoms of a brachial plexus injury, noted that she had chronic neck and back symptoms and multiple medical problems including cardiac problems and diabetic problems and opined that she was disabled because of the peripheral neuropathy with the diabetes. A December 14, 1998 nerve conduction velocity test report demonstrated "denervation ... in the peripheral muscles and L5-S1 innervated muscles which could be indicative of a combination of both radiculopathy and neuropathy." In two other reports, Dr. Chhabria discussed appellant's need for an angioplasty and her clinical findings of peripheral neuropathy and hypertension.

By decision dated December 21, 1999, the Office denied modification of the September 24, 1998 decision, finding that the evidence submitted in support was insufficient to warrant modification of the prior decision. The Office found that none of the evidence submitted demonstrated ongoing injury-related disability for work or injury residuals requiring further medical treatment.

By undated letter appellant again requested reconsideration and argued that Dr. Tan did not submit his report in time to establish causal relationship. However, no such report was included.

By decision dated June 5, 2000, the Office denied appellant's request for a reopening of her case for further review on its merits under 5 U.S.C. § 8128(a). The Office found that her letter neither raised a substantive legal question nor included new and relevant evidence to warrant reopening appellant's claim.

The Board finds that appellant had no disability for work or injury residuals requiring further medical treatment after September 24, 1998, causally related to her March 2, 1983 employment injuries.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[1] After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[2] Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.[3] To terminate authorization for medical treatment, the Office must establish that appellant no loner has residuals of an employment-related condition that require further medical treatment.[4]

The Office met its burden of proof to terminate both wage-loss compensation and medical benefits based on the well-rationalized report of Dr. Geline, the impartial medical examiner.

In this case, appellant's treating physicians, Drs. Tan, Peter Chhabria and Shaku Chhabria continued to support that appellant was disabled due to a variety of conditions. Dr. Tan diagnosed bilateral carpal tunnel syndrome associated with her diabetes mellitus, severe polyneuropathy probably diabetes related, diabetic neuropathy, cervical strain both without radiculopathy, lumbosacral radiculopathy with spondylosis versus neuromyopathy and polyneuritis, low back pain with sciatica, coronary artery disease, frequent chest pain and shortness of breath. However, he did not diagnose any condition, which directly related to appellant's March 2, 1983 soft tissue muscular strain injury either by causation or by aggravation. Dr. Tan also did not discuss causal relation of any of appellant's diagnosed conditions to her accepted "lumbar disc syndrome." He related most of appellant's disabling conditions to her diabetes mellitus, noted that EMG testing revealed cervical lumbosacral strain with radiculopathy, but failed to explain how cervical lumbosacral strain with radiculopathy in 1992 was related to the accepted self-limiting soft tissue paraspinal muscular strain in 1983 or "lumbar disc syndrome" in 1983. Further, Dr. Tan noted that appellant's diagnosed problem of cervical and lumbosacral radiculopathy with spondylosis versus neuromyopathy and polyneuritis had yet to be established. These opinions, therefore, do not support, relying on objective documentation, that appellant actually had cervical or lumbosacral strain with radiculopathy, nor

[1] *Harold S. McGough*, 36 ECAB 332 (1984).

[2] *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

[3] *Marlene G. Owens*, 39 ECAB 1320 (1988).

[4] *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

does it establish causal relation with the 1983 muscular strain injury. Accordingly, Dr. Tan's opinions are of diminished probative value.

Dr. Peter Chhabria noted that appellant's 1989 MRI scan of the lumbar spine was normal and without evidence of disc herniation and Dr. Shaku Chhabria diagnosed chronic lumbar syndrome with possible herniated discs versus facet arthritis and noted that she had radicular symptoms in her legs. On February 24, 1998 Dr. Chhabria noted that appellant's ongoing symptoms were related to her diabetes, but stated that her chronic low back pain was secondary to a work-related injury, however, she did not explain that relationship. Dr. Chhabria noted that nerve conduction velocity testing demonstrated peripheral neuropathy with denervation related to appellant's diabetes. Dr. Chhabria later noted that appellant's MRI scan did not demonstrate any disc herniation and she diagnosed lumbar radiculopathy and diabetic neuropathy. Causation of the lumbar radiculopathy was not discussed. Therefore, these opinions are of diminished probative value and do not conclusively establish that appellant has any further disability for work or medical residuals requiring further treatment.

However, the Office second opinion specialist, Dr. Wehner, reviewed appellant's factual and medical history and noted upon examination that appellant had no significant paraspinal spasm, that her gait was normal but slow, that she could walk on her heels and toes, that she could sit comfortably in bed and that her hip range of motion was without pain. She noted that appellant's MRI scan study results were normal and that her EMG study results were also normal. Dr. Wehner noted that CT scan results from 1986 showed an L5-S1 mild disc bulge, which was less than that shown in 1985 and some mild facet arthritis at L5-S1. Causation of this finding was not discussed. She opined that appellant had suffered lumbar strain, which was active for about three months and that after that her present state of disability was due to her diabetes and other medical problems. No objective findings to suggest that a strain was still active were identified. Dr. Wehner noted that appellant self-limited herself and was deconditioned, but found no medical connection between appellant's 1983 injury and her current condition. She opined that appellant's current disability was related to her diabetes mellitus. Dr. Wehner noted that, since appellant's MRI scan was normal such that there was no spinal canal lesion such as a herniated disc to cause her left leg pain, her present symptomatology was most likely related to her diabetes. She opined that appellant was capable of performing the physical requirements of her date-of-injury job without restrictions, if her other noninjury-related conditions were not considered and that no further medical treatment or diagnostic studies needed to be done with regard to the 1983 injury.

The Office then properly determined that a conflict in medical opinion evidence arose between appellant's treating physicians, Drs. Tan, Peter Chhabria and Shaku Chhabria and the Office second opinion specialist, Dr. Wehner.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

As a conflict arose in this case as to whether appellant had continuing disability for work due to her 1983 injuries and as to whether she needed further medical treatment, appellant was

properly referred to a third specialist, Dr. Geline, for an impartial medical opinion to resolve the conflict.

Dr. Geline reviewed appellant's factual and medical history, noted her current complaints, performed a complete physical examination and diagnosed a contusion of the lumbar spine, degenerative arthritis of the lumbar spine, diabetes mellitus and diabetes-related peripheral neuropathy. He opined, in a well rationalized report that appellant had no residuals of her 1983 injury and that such an injury would have resolved within three months. Dr. Geline noted that appellant's subsequent symptoms were not related to the original incident and that her leg pain was related to her diabetic neuropathy. He opined that appellant was capable of performing the usual tasks of her date-of-injury job, based upon the absence of physical findings and radiographic lesions. Dr. Geline indicated that appellant could work eight hours per day with lifting limits and that no further medical treatment was indicated for the work-related injury.

The Board has held that where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[5]

In this case, Dr. Geline's report was based upon a complete and proper factual and medical background and was well rationalized, such that it is entitled to that special weight. Accordingly, his report constitutes the weight of the medical opinion evidence and resolves the existing conflict, establishing that appellant had no further disability for work or injury residuals requiring further medical treatment, causally related to her 1983 employment injuries. The Office, therefore, met its burden of proof to terminate appellant's benefits on the basis of this report.

Subsequent to the impartial medical examiner's report, further medical evidence was submitted from Dr. Chhabria, which restated her previous findings, noted that appellant had symptoms of a brachial plexus injury, chronic neck and back problems, cardiac problems and diabetic problems and opined that appellant was disabled because of the peripheral neuropathy due to diabetes.

The Board has frequently explained that additional, repetitious reports from an appellant's physician are insufficient to overcome the weight accorded to an impartial medical examiner's report where appellant's physician had been on one side of the conflict in medical opinion that the impartial medical examiner resolved.[6]

In this case, Dr. Chhabria's additional reports added nothing new, were repetitious of those reports already of record and considered by the Office and lacked any medical rationale explaining how appellant's current problems were causally related to the 1983 soft tissue muscular strain injury or "lumbar disc syndrome." Therefore, they did not overcome the weight accorded the impartial medical examiner's report and were insufficient even to create a new conflict. Consequently, the Office properly denied modification of the termination decision.

[5] *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

[6] *Harrison Combs, Jr.*, 45 ECAB 716 (1994).

Further, the Board finds that the Office did not abuse its discretion by denying appellant's request for further consideration of her case on its merits under 5 U.S.C. § 8128(a).

Section 8128(a) of the Act[7] does not give a claimant the right upon request or impose a requirement upon the Office to review a final decision of the Office awarding or denying compensation.[8] Section 8128(a) of the Act, which pertains to review, vests the Office with the discretionary authority to determine whether it will review a claim following issuance of a final Office decision. Section 8128(a) of the Act states:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may--
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> (1) end, decrease, or increase the compensation previously awarded; or
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> (2) award compensation previously refused or discontinued."[9]

Although it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under 5 U.S.C. § 8128,[10] the Office, through regulations, has placed limitations on the exercise of that discretion with respect to a claimant's request for reconsideration. By these regulations the Office has stated that it will reopen a claimant's case and review the case on the merits under 5 U.S.C. § 8128(a) upon request by the claimant whenever the claimant's application for review meets the specific requirements set forth in sections 10.606 through 10.609 of Chapter 20 of the Code of Federal Regulations revised as of April 1, 1999.

The Federal Register dated November 25, 1998, announced that effective January 4, 1999, certain changes to 20 C.F.R. Parts 1 to 399 would be implemented.[11] These changes are specifically enumerated in the volume of 20 C.F.R. Parts 1 to 399 revised as of April 1, 1999. Regarding the revised Office procedures involving the requirements for obtaining a review of a

[7] 5 U.S.C. § 8101 *et seq*; *see* 5 U.S.C. § 8128(a).

[8] *Compare* 5 U.S.C. § 8124(b)(1) which entitles a claimant to a hearing before an Office hearing representative as a matter of right provided that the request for a hearing is made within 30 days of a final Office decision and provided that the request for a hearing is made prior to a request for reconsideration.

[9] 5 U.S.C. § 8128(a).

[10] *See Charles E. White*, 24 ECAB 85-86 (1972).

[11] The Board and the Office agree that January 4, 1999 became the effective date of the changes announced in the November 25, 1998 Federal Register as it was the first business day following the January 1, 1999 holiday and as there was no indication that there was any intended delay for implementation of these enumerated changes.

case on its merits under 5 U.S.C. § 8128(a), the changes effective January 4, 1999 are enumerated as follows:

> "To require the Office to reopen a case for merit review under section 8128(a) of the Act,[12] the Office's regulations provide that a claimant must--
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> (1) submit such application for reconsideration in writing; and
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> (2) set forth arguments and contain evidence that either;
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> (i) shows that the Office erroneously applied or interpreted a specific point of law;
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> (ii) advances a relevant legal argument not previously considered by the Office; or
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> (iii) constitutes relevant and pertinent new evidence not previously considered by the Office."[13]

To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[14] The Board has found that the imposition of the one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under section 8128(a) of the Act.[15] When a claimant fails to meet one of the above-mentioned standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[16]

Section 10.608(a) states that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2). If reconsideration is granted, the case is reopened and the case is reviewed on its merits.[17] This section, however, continues to state in paragraph (b) that where the request is timely but fails to meet at least one of the standards described in section 10.606(b)(2), or where the request is untimely and fails to present any clear evidence of error, the Office will deny the application for reconsideration without reopening the case for a review on the merits.

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[12] 5 U.S.C. §§ 8101-8193.

[13] 20 C.F.R. § 10.606(b)(1), (2).

[14] 20 C.F.R. § 10.607(a).

[15] *Diane Matchem*, 48 ECAB 532 (1997); *Jeanette Butler*, 47 ECAB 128 (1995); *Mohamed Yunis*, 46 ECAB 827 (1995); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[16] *See Mohamed Yunis*, *supra* note 15; *Elizabeth Pinero*, 46 ECAB 123 (1994); *Joseph W. Baxter*, 36 ECAB 228 (1984).

[17] 20 C.F.R. § 10.608(a); *see also* § 10.609(a-c).

In this case, with her request for merit reconsideration under section 8128(a) appellant submitted an undated letter arguing that Dr. Tan did not submit his report in time to establish causal relationship. The Board notes that this argument is cumulative of her previous contentions and that it is appellant's responsibility to see that all relevant evidence has been submitted to the record for consideration by the Office. As no such reports from Dr. Tan were submitted to the record, appellant did not provide evidence sufficient to warrant a reopening of her case for further review on its merits. Consequently, this argument does not constitute a basis for reopening a claim for further merit review under 20 C.F.R. § 10.606(2)(i-iii). Therefore, under 20 C.F.R. § 10.608(b) the Office properly denied appellant's application for reopening her case for a review on its merits.

In this case, appellant has not established that the Office abused its discretion in its June 5, 2000 decision by denying her request for a review on the merits of its December 21, 1999 decision, under section 8128(a) of the Act, because she has failed to show that the Office erroneously applied or interpreted a point of law, failed to advanced a point of law or a fact not previously considered by the Office or failed to submitted relevant and pertinent evidence not previously considered by the Office.

As the only limitation on the Office's authority is reasonableness, an abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.[18] Appellant has made no such showing here.

Accordingly, the June 5, 2000 and December 21, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 27, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

[18] *Daniel J. Perea*, 42 ECAB 214 (1990).