

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of THOMAS C. McELHANEY and U.S. POSTAL SERVICE,  
POST OFFICE, Manhattan, KS

*Docket No. 99-979; Submitted on the Record;  
Issued August 23, 2000*

---

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for a merit review under 20 C.F.R. § 10.138.

This case has previously been before the Board on appeal. In a decision dated August 25, 1998,<sup>1</sup> the Board affirmed the Office's April 17, 1996 denial of reconsideration. With respect to the evidence submitted on reconsideration, the Board found appellant's submissions to be irrelevant and repetitious with regard to the issue of whether appellant established a causal relationship between his 1993 foot trauma and his accepted June 18, 1998 knee injury. Consequently, the Board concluded that appellant failed to demonstrate a basis for reopening his claim for a merit review. The history of the case and conclusions of law are set forth in greater detail in the Board's prior decision and are incorporated herein by reference.

On November 23, 1998 the Office received an undated request for reconsideration from appellant. However, appellant did not submit any additional evidence with his request for reconsideration. By decision dated December 2, 1998, the Office denied appellant's request for reconsideration.

The Board finds that the Office properly exercised its discretion in refusing to reopen appellant's case for a merit review under 20 C.F.R. § 10.138.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>2</sup> Section 10.138(b)(2) provides that, when an application

---

<sup>1</sup> Docket No. 96-2155.

<sup>2</sup> 20 C.F.R. § 10.138(b)(1).

for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.138(b)(1), the Office will deny the application for review without reaching the merits of the claim.<sup>3</sup>

Appellant's November 23, 1998 request for reconsideration merely questioned the weight previously accorded certain items of evidence and expressed general disagreement with the prior resolution of the claim. The request neither alleged nor demonstrated that the Office erroneously applied or interpreted a point of law. Additionally, appellant did not advance a point of law or a fact not previously considered by the Office. Accordingly, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.138(b)(1). With respect to the third requirement, submitting relevant and pertinent evidence not previously considered, the Office correctly noted that appellant did not submit any evidence with his November 23, 1998 request for reconsideration. Consequently, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.138(b)(1).

As appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.138(b)(1), the Board finds that the Office did not abuse its discretion in denying appellant's November 23, 1998 request for reconsideration.

The December 2, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.  
August 23, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

---

<sup>3</sup> 20 C.F.R. § 10.138(b)(2).