

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT M. BROWN and U.S. POSTAL SERVICE,
POST OFFICE Cincinnati, OH

*Docket No. 00-653; Submitted on the Record;
Issued December 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further consideration of the merits of his claim under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record and finds that the Office's refusal to reopen appellant's case for further reconsideration of the merits of his claim did constitute an abuse of discretion.

On January 20, 1997 appellant filed a notice of traumatic injury alleging that he injured his right ring finger. He stated that, on January 19, 1997, a desk fell on and crushed his right ring finger when his supervisor was showing him how to use a furniture jack. In support of his claim, appellant submitted several forms from Good Samaritan Hospital received on February 12, 1997, listing the discharge diagnosis as "amputation to right ring finger."

The Office accepted appellant's claim for "amputation injury of the tip of the right ring finger" on February 28, 1997. On September 8, 1998 the Office granted appellant a schedule award based on eight percent loss of the right ring finger, which amounted to two weeks of compensation. By memorandum dated August 16, 1999, appellant's lawyer requested reconsideration of the decision, "based on the fact that an eight percent loss should have been granted." He also stated, "your two weeks of compensation did not accurately represent the findings of the doctor. Therefore, the report and your ultimate decision was legally and factually wrong." On September 10, 1999 the Office denied the request for review because the contention was immaterial and insufficient to warrant review.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

Because more than one year has elapsed between the issuance of the Office's September 8, 1998 decision and October 29, 1999, the date appellant files his appeal with the Board, the Board lacks jurisdiction to review the September 8, 1999 decision and any preceding decisions. Therefore, the only decision before the Board is the Office's September 10, 1999 nonmerit decision denying appellant's application for a review of its September 8, 1998 decision.

Section 8128(a) of the Federal Employees' Compensation Act² 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. 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. The Office through regulations, has placed limitations on the exercise of that discretion.

To require the Office to reopen a case for merit review, section 10.606 provides that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and setting forth arguments or submitting evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.³ When a claimant fails to meet at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.⁴

In support of his request for reconsideration, appellant's representative alleges that the schedule award for two weeks did not accurately represent the findings of the Office medical adviser. Appellant's representative has advanced a relevant legal argument not previously considered by the Office. The September 8, 1998 schedule award awarded compensation to appellant for "eight percent permanent partial loss of right ring (third) finger." The Office medical adviser's April 22, 1998 brief notes to the claims examiner and reference to Table 17, page 57 of the A.M.A., *Guides* refers to upper extremity impairments. The Office medical adviser acknowledged he also considered Raynaud's phenomenon of the hand. The September 8, 1998 decision granting an award for impairment of the third ring finger appears inconsistent with the rating calculated by the Office medical adviser. Appellant's representative's argument in support of reconsideration that appellant was entitled to more than two weeks' compensation constitutes a relevant legal argument requiring a merit review. Consequently, the Office abused its discretion in denying a merit review.

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

⁴ 20 C.F.R. § 10.608(a).

The decision of the Office of Worker's Compensation Programs dated September 10, 1999 is hereby set aside and the case is remanded for a merit review.

Dated, Washington, DC
December 7, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member