

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHARLES W. RANDALL and U.S. POSTAL SERVICE,  
POST OFFICE, St. Louis, MO

*Docket No. 99-954; Submitted on the Record;  
Issued June 1, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office, in its October 19, 1998 decision, to reopen appellant's case for further consideration of the merits of his claim did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>1</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; or (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.<sup>2</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.<sup>3</sup> When a claimant fails to meet one of the above 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.<sup>4</sup>

The only decision before the Board in this appeal is the October 19, 1998 decision, in which the Office denied appellant's request for a review on the merits of his claim. Because

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<sup>1</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or application." 5 U.S.C. § 8128(a).

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

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

<sup>4</sup> *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

more than one year has elapsed between the date of the Office's merit decisions dated September 3, 1996 and September 2, 1997 and the filing of appellant's appeal on January 22, 1999, the Board lacks jurisdiction to review the prior merit decisions.<sup>5</sup>

In the present case, appellant requested reconsideration on May 16, 1997 of the Office's September 3, 1996 denial of his claim that the pain, which developed in his finger, wrist and shoulder was due to factors of his employment.

By decision dated September 2, 1997, the Office denied modification of the prior decision because the medical evidence submitted lacked sufficient probative value to establish a causal connection between the claimed condition and factors of appellant's employment.

Appellant again requested reconsideration of his claim in a letter dated July 19, 1998. In support of his request, appellant submitted wage information, and other documentation regarding his blood work and cholesterol levels. Appellant also submitted a summary of a magnetic resonance imaging evaluation of his lumbar spine dated May 20, 1996; an x-ray report dated March 5, 1996; and a letter report dated April 30, 1997 from Dr. Denise Taylor, a Board-certified family practitioner. Further, appellant argued that opinions, which had been previously submitted by Dr. Taylor and Dr. Dennis Brooks, his family physician, that his position as a mailhandler and machine operator had aggravated his condition, should be used to support his claim.

With respect to the medical evidence submitted, appellant did not submit any new evidence in connection with his July 19, 1998 reconsideration request, but only evidence that had been previously considered by the Office. Appellant has therefore not met the requirement of section 10.138(b)(1)(iii) to submit new and relevant evidence. Further, the arguments advanced by appellant in his request are not sufficient to require reopening the case. The issue of the case is essentially medical in nature, *i.e.*, whether the medical evidence shows that the claimed condition is causally related to factors of his employment. Appellant did not submit any new and relevant medical evidence in this case. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>6</sup>

Appellant has not established that the Office abused its discretion in its October 19, 1998 decision by denying his request for a review on the merits of his claim under section 8128(a) of the Act, because he failed to show that the Office erroneously applied or interpreted a point of law, advance a point of law or a fact not previously considered by the Office or submit relevant and pertinent evidence not previously considered by the Office.

The decision of the Office of Workers' Compensation Programs dated October 19, 1998 is affirmed.

Dated, Washington, D.C.

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<sup>5</sup> 20 C.F.R. § 501.3(d)(2).

<sup>6</sup> *Linda I. Sprague*, 48 ECAB 386 (1997).

June 1, 2000

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member