

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In The Matter of ISAAC LADSON and DEPARTMENT OF THE NAVY,
MILITARY SEALIFT COMMAND, Virginia Beach, VA

*Docket No. 99-1889; Submitted on the Record;
Issued September 1, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs properly denied merit review of appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

On November 25, 1996 appellant, a 34-year-old utility seaman, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on July 18, 1996 he sustained an injury to his back and fractured his right arm when he slipped and jammed his back on the wet floor of the shower. Appellant stopped work from October 28, 1996 to May 30, 1997.¹

On March 21, 1997 the Office accepted appellant's claim for contusion low back and low back sprain.

On December 9, 1997 the Office denied appellant's claim for compensation for the period of October 28, 1996 to May 30, 1997 as appellant had not provided sufficient medical evidence.

In a letter received by the Office on January 5, 1998, appellant requested reconsideration of the Office's December 9, 1997 decision.

In a January 23, 1998 decision, the Office denied appellant's reconsideration request, without a merit review, on the grounds that the evidence was insufficient to warrant a review of the prior decision.

Appellant again requested reconsideration on January 13, 1998.

¹ Appellant was a temporary employee and was terminated on or about October 28, 1996.

On February 10, 1998 the Office again denied appellant's reconsideration request, without a merit review, on the grounds that the evidence was insufficient to warrant a review of the prior decision.

Appellant, through his attorney, requested reconsideration in a letter received by the Office on December 10, 1998.

By decision dated March 22, 1999, the Office denied appellant's request for review of the merits of the case after finding that the evidence submitted in support of the request for review was cumulative in nature and not sufficient to warrant a merit review of the prior decision.

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.² As appellant filed his appeal with the Board on May 4, 1999, the Board lacks jurisdiction to review the Office's most recent merit decision dated December 9, 1997. Consequently, the only decision properly before the Board is the Office's March 22, 1999 decision denying appellant's request for reconsideration.

The Board finds that the Office properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

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. The Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application. The Secretary in accordance with the facts found on review may:

“(1) end, decrease, or increase the compensation awarded; or

“(2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of the claim by submitting evidence and argument: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that where the request fails to meet at least one of the standards described in section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.³

In the present case, appellant filed a request for reconsideration, which was received by the Office on December 10, 1998. New and relevant medical evidence did not accompany the request. This is important since the underlying issue in the claim, whether appellant has work-related disability from October 28, 1996 to May 30, 1997, is essentially medical in nature.

² 20 C.F.R. §§ 501.2(c), 501.3(d)(2) (1998) and 20 C.F.R. § 10.607(a) (1999).

³ 20 C.F.R. § 10.608(b) (1999).

Contentions made by appellant's attorney regarding appellant's disability status have no reasonable color of validity in view of the absence of medical evidence relevant to the point at issue.⁴

In its March 22, 1999 decision, the Office correctly noted that appellant did not submit relevant and pertinent new evidence not previously considered by the Office nor did he advance a relevant legal argument that had not been previously considered by the Office. Additionally, appellant's representative did not argue that the Office erroneously applied or interpreted a specific point of law. Consequently, appellant is not entitled to a review of the merits of the claim based upon any of the above-noted requirements under 10.606(b)(2). Accordingly, the Board finds that the Office properly denied appellant's December 10, 1998 request for reconsideration.

The decision of the Office of Workers' Compensation Programs dated March 22, 1999 is hereby affirmed.

Dated, Washington, D.C.
September 1, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Valerie D. Evans-Harrell
Alternate Member

⁴ See *John F. Critz*, 44 ECAB 788 (1993) (reopening of a claim not required where a legal contention does not have a reasonable color of validity).