

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDDIE WRIGHT and U.S. POSTAL SERVICE,
JAF BUILDING, New York, NY

*Docket No. 01-886; Submitted on the Record;
Issued November 29, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for reconsideration.

The Board has duly reviewed the case record and finds that the Office properly denied appellant's request for reconsideration.

On February 23, 1999 appellant, then a 58-year-old express mail dispatcher, filed a notice of traumatic injury alleging that he injured his back while in the performance of duty. Appellant stated that on November 25, 1998 he was pushing an express mail cart from one end of the building to the other, which weighed over 340 pounds, when he experienced numbness in his lower left leg and foot. He stated that later that day he experienced pain in his lower back, hip and again felt numbness in his lower left leg and foot.

Appellant was treated in the emergency room on November 26, 1998 and was diagnosed with "back pain." Appellant also submitted a treatment note dated December 29, 1998 from Dr. Sean E. McCance, a Board-certified orthopedic surgeon, who diagnosed appellant with leg and lower back pain and stated that he could not work until further notice. Appellant has not worked since November 25, 1998.

By letter dated April 14, 1999, the Office requested that appellant submit additional information to support his claim.

Appellant submitted a statement from a colleague who stated that she witnessed appellant on November 24, 1998 and that he "appeared to not be feeling well." "It was like something was hurting him," she stated. Appellant also submitted a personal statement dated May 7, 1999, in which he did not file a claim sooner because his supervisor would not give him a claim form.

Appellant had a magnetic resonance imaging scan of the lumbar spine performed on January 4, 1999 by Dr. William Louie, a Board-certified diagnostic radiologist. The results

indicated: “Broad based, far left lateral L3-4 disc protrusion with probable impingement upon the left L3 nerve root. L4-5 disc bulge.”

Appellant also submitted a medical report dated December 8, 1998 from Dr. McCance. He indicated that appellant’s main complaint was pain in the left buttock area and numbness in the left foot area with some burning. Dr. McCance diagnosed appellant with “probable intermittent stenosis left side with intermittent radiculopathy, rule out herniated disc.” He added that x-rays were obtained of the lumbar spine and that they showed overall good disc space and height and that there were no obvious malalignments or body abnormalities. Dr. McCance did not address a history of injury.

By decision dated September 17, 1999, the Office denied appellant’s claim.

By letter dated August 28, 2000, appellant requested reconsideration. In support of his request, appellant submitted a brief outlining his legal arguments and a copy of the November 26, 1998 emergency room report already contained in the record. Appellant highlighted the statement: “[Appellant] is a 56-year-old male who reports history of sharp pain in the lower back, radiating to posterior thigh.... Patient does a lot of heavy lifting at work.”

By decision dated November 22, 2000, the Office denied appellant’s request for reconsideration.

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 Because more than one year has elapsed between the issuance of the Office’s September 17, 1999 decision and February 16, 2001, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the September 17, 1999 decision. Therefore, the only decision before the Board is the Office’s November 22, 2000 nonmerit decision denying appellant’s application for review of its September 17, 1999 decision.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act,² the Office’s regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.³ 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.⁴ When a claimant fails to

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

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.606.

⁴ 20 C.F.R. § 10.607.

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.⁵

In support of his August 28, 2000 request for reconsideration, appellant submitted a brief containing legal arguments, which were already considered by the Office in their September 17, 1999 decision. Appellant also submitted a copy of the November 26, 1998 emergency room report already contained in the record. The Board has found that evidence that repeats or duplicates evidence already in the record has no evidentiary value and does not constitute a basis for reopening a case.⁶ Appellant did not submit any new evidence nor did he present any legal arguments not previously considered by the Office. The evidence submitted by appellant in support of his request for reconsideration is irrelevant or duplicative evidence that does not address the medical issue of causal relationship between his diagnosed condition and the incident on November 25, 1998.

As appellant's August 28, 2000 request for reconsideration does not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying that request.

The November 22, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.⁷

Dated, Washington, DC
November 29, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁵ 20 C.F.R. § 10.608.

⁶ *Paul Kovash*, 49 ECAB 350 (1998).

⁷ The Board also affirms the Office's January 2 and February 20, 2001 decisions, regarding attorney fees.