

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAMONTE SIMPSON and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 02-1214; Submitted on the Record;
Issued September 17, 2002*

DECISION and ORDER

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

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.

In July 1999 appellant, then a 49-year-old former letter carrier, filed a claim alleging that he sustained low back and cervical injuries due to bending, twisting, turning and standing while casing mail between October 26 and November 1, 1996.¹ By decision dated September 2, 1999, the Office denied appellant's claim that she sustained an occupational injury between October 26 and November 1, 1996. By decision dated May 10, 2000, an Office hearing representative affirmed the Office's September 2, 1999 decision.² By decision dated May 3, 2001, the Board affirmed the Office's September 2, 1999 and May 10, 2000 decisions. By decision dated January 7, 2002, the Office denied appellant's request for a merit review.

The Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

¹ Appellant initially indicated that the injury occurred on November 1, 1996 but he later claimed that it occurred over a period of time. The file number for the present claim is A9-455581. The Office previously accepted that appellant sustained an employment-related low back and cervical injury on April 1, 1987 and appellant performed limited-duty work thereafter, for the employing establishment. Appellant continued to receive wage-loss compensation in connection with this claim (A9-310180). He also has a claim before the Office for an alleged emotional condition (A9-450657).

² In its decisions, the Office asserted that appellant did not report the claim injury, but it has in essence accepted the factual aspect of appellant's claim, *i.e.*, that appellant engaged in extended bending, twisting, turning and standing while casing mail between October 26 and November 1, 1996. The existence of these duties is supported by the evidence of record. Therefore, appellant's claim was denied on the grounds that he did not submit sufficient medical evidence to show that he sustained the claimed condition due to the accepted employment factors.

The only decision before the Board on this appeal is the Office's January 7, 2002 decision denying appellant's request for a review on the merits of its prior decisions. Because more than one year has elapsed between the issuance of the Office's prior merit decisions and March 26, 2002, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the prior merit decisions.³

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁴ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law not previously considered by the Office; or (3) submit new relevant and pertinent evidence not previously considered by the Office.⁵ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.⁶ 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.⁷

In support of his reconsideration request, appellant submitted numerous documents concerning the treatment of his low back and neck problems. In several reports dated between late 1996 and mid 1998, Dr. Arthur Brickel, an attending Board-certified neurologist, indicated that appellant's low back and cervical conditions were due to the "work incident" or the "work injury." Most of these reports referred to claim no. A9-310180 which relates to appellant's April 1, 1987 injury to his low back and cervical region. The Board has carefully reviewed these reports and notes that they do not relate to the subject of the present claim, *i.e.*, appellant's claim that he sustained low back and cervical injuries due to bending, twisting, turning and standing while casing mail between October 26 and November 1, 1996.⁸ These reports make no clear mention of the employment factors implicated in the present claim, but rather appear to relate to appellant's April 1, 1987 injury which is not the subject of the present claim. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁹ Appellant also submitted numerous documents

³ See 20 C.F.R. § 501.3(d)(2).

⁴ 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 on application." 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. §§ 10.606(b).

⁶ 20 C.F.R. § 10.608(a).

⁷ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁸ In a report dated May 1, 1997, Dr. Brickel stated, "[f]urther, it is my well-reasoned medical opinion that his unauthorized change from sedentary to standing-type work was directly and causally related to his medically deteriorating condition." Dr. Brickel did not, however, further articulate this statement or otherwise implicate the work duties appellant performed from October 26 to November 1, 1996.

⁹ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

relating to grievances he filed against the employing establishment.¹⁰ However, these documents would not be relevant to the main issue of the present case which is essentially medical in nature.

In the present case, appellant has not established that the Office abused its discretion in its January 7, 2002 decision by denying his request for a review on the merits of its decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, that he advanced a point of law or a fact not previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office.

The January 7, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
September 17, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ In some of these documents, appellant asserted that, as a settlement of his grievances, he should be allowed to case mail despite being in a limited-duty position.