

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WARDEL MADDOX and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS AFFAIRS HOSPITAL, Lyons, NJ

*Docket No. 03-916; Submitted on the Record;  
Issued June 16, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,  
A. PETER KANJORSKI

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

This case was previously before the Board.<sup>1</sup> By decision and order dated October 19, 2001, the Board affirmed a December 29, 2000 Office decision, which terminated appellant's compensation effective December 30, 2000 on the grounds that he had no continuing disability or medical condition causally related to his April 26, 1972 employment injury.<sup>2</sup> The Board's October 19, 2001 decision is incorporated herein by reference.

By letter dated June 3, 2002, appellant requested reconsideration and submitted additional evidence. Appellant submitted an October 2, 2001 radiology report indicating degenerative disc disease at L4-5 and L5-S1. He also submitted notes dated October 8, 2001 in which Dr. William D. Caffrey, an attending Board-certified orthopedic surgeon, diagnosed moderate knee arthritis and degenerative disc disease of the lumbar spine.<sup>3</sup>

By decision dated August 13, 2002, the Office denied appellant's request for reconsideration.<sup>4</sup>

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<sup>1</sup> Docket No. 01-1023 (issued October 19, 2001).

<sup>2</sup> The Office had accepted that appellant sustained a lumbosacral strain, right inguinal area contusion, small right finger laceration, and a right knee meniscal tear in the performance of duty on April 26, 1972.

<sup>3</sup> Appellant also submitted evidence previously of record.

<sup>4</sup> The Board notes that appellant filed his appeal to the Board on February 26, 2003. Therefore, the Office's decision dated March 6, 2003 denying a January 11, 2003 request for reconsideration from appellant is null and void as the Board and the Office may not have simultaneous jurisdiction over the same issue in the same case. *See Arlonia B. Taylor*, 44 ECAB 591, 597 (1993); *Russell E. Lerman*, 43 ECAB 770, 772 (1992).

The Board finds that the Office properly denied reconsideration of appellant's claim under 5 U.S.C. § 8128(a).

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.<sup>5</sup> When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>6</sup>

In this case, in its October 19, 2001 decision, the Board affirmed the Office's most recent merit decision, dated December 29, 2000, in which the Office terminated appellant's compensation effective December 30, 2000. After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability which continued after termination of compensation benefits.<sup>7</sup>

In support of his request for reconsideration, appellant submitted an October 2, 2001 radiology report and an October 8, 2001 report from Dr. Caffrey, an attending Board-certified orthopedic surgeon, indicating that he had degenerative disc disease of the lumbar spine and arthritis in the knee. These reports did not explain the causal relationship of these conditions to appellant's April 26, 1972 employment injury. This evidence is not relevant and pertinent evidence as it does not address the critical issue of whether appellant had any disability or medical condition after December 30, 2000 causally related to his April 26, 1972 employment injury.<sup>8</sup>

As appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent evidence not previously considered by the Office, the Office properly denied his request for reconsideration.

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<sup>5</sup> 20 C.F.R. § 10.606(b)(2).

<sup>6</sup> 20 C.F.R. § 10.608(b).

<sup>7</sup> See *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

<sup>8</sup> Appellant submitted evidence which had previously been considered by the Office, but the submission of such evidence would not require reopening of his claim; see *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

The decision of the Office of Workers' Compensation Programs dated August 13, 2002 is affirmed. The decision of the Office dated March 6, 2003 is set aside as null and void.

Dated, Washington, DC  
June 16, 2003

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member