

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES McGOVERN and U.S. POSTAL SERVICE,
POST OFFICE, Salinas, Calif.

*Docket No. 96-1014; Submitted on the Record;
Issued March 17, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's February 27, 1995 request for reconsideration under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record in the present appeal and finds that the Office properly denied appellant's February 27, 1995 request for reconsideration under section 8128(a).

On April 25, 1994 appellant, a mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 23, 1994 he sustained a right shoulder strain when he fell off the top step after delivering the mail. The Office accepted appellant's claim for right shoulder strain on May 25, 1994.

By decision dated December 16, 1994, the Office found the evidence of record insufficient to establish that appellant had any continuing disability causally related to the accepted April 23, 1994 employment injury.

In a February 27, 1995 letter, appellant requested reconsideration of the Office's December 16, 1994 decision accompanied by factual evidence.

By decision dated March 15, 1995, the Office denied appellant's request for reconsideration without reviewing the merits of the claim on the grounds that the evidence submitted was irrelevant and immaterial.

By letter dated June 19, 1995, the Office advised appellant in response to his question regarding the meaning of its telephone message that his claim will remain open for medicals, that he was entitled to medical treatment for his right shoulder condition, but that he was not entitled to compensation for disability without supportive medical evidence.

By letter dated January 17, 1996, appellant requested that the Office explain its response in a May 11, 1995 letter to Congressman Sam Farr whereby it stated that appellant's claim had not been denied, but that only a closed period of compensation had been denied. Appellant contended that he was totally disabled based on a February 7, 1995 medical report of Dr. Albert B. Doornik, a Board-certified orthopedic surgeon.¹

In a January 24, 1996 response, the Office advised appellant that he had failed to submit any new information sufficient to overturn its final decision. The Office also advised appellant to exercise his appeal rights.

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 Inasmuch as appellant filed his appeal with the Board on February 5, 1996, the only decision properly before the Board is the Office's March 15, 1995 decision denying appellant's request for reconsideration.

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Section 10.138(b)(1) of 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 point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.³ Section 10.138(b)(2) provides that 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 review of the merits of the claim.⁴

In support of his request for reconsideration, appellant submitted a notification of personnel action (Form SF-50), a September 23, 1994 notice of determination from the state of California Employment Development Department denying his application for unemployment benefits, and the first page of the Office's December 16, 1994 decision. The Board finds that this evidence is not relevant to the issue in this case, whether appellant sustained any disability causally related to the accepted April 23, 1994 employment injury. Evidence that does not address the relevant issue involved in the case does not constitute a basis for reopening a claim.⁵

¹ Dr. Doornik's medical report revealed a review of medical records, a history of the employment injury, his findings on physical and x-ray examination, and a diagnosis of right shoulder impingement syndrome and acromioclavicular joint dysfunction. Regarding appellant's disability status, Dr. Doornik opined that appellant was not permanent and stationary at that time and that appellant required medical treatment such as, a course of subacromial cortisone injections and a diagnostic lidocaine injection into his acromioclavicular joint and/or a cortisone injection into his acromioclavicular joint. Dr. Doornik stated that appellant was precluded from performing repetitive activity or over the shoulder activity with his right shoulder.

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

³ 20 C.F.R. § 10.138(b)(1); *Thankamma Mathews*, 44 ECAB 788 (1993).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Ernest J. LeBreux*, 42 ECAB 736 (1991).

Inasmuch as appellant has failed to submit any new evidence to substantiate that he sustained any disability causally related to his accepted right shoulder condition, the Office was not required to review the merits of appellant's claim.

The March 15, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
March 17, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member