

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHRISTOPHE JOLICOEUR and DEPARTMENT OF JUSTICE,  
IMMIGRATION & NATURALIZATION SERVICE, Miami, FL

*Docket No. 99-1511; Submitted on the Record;  
Issued December 15, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, PRISCILLA ANNE SCHWAB,  
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for merit review, pursuant to 5 U.S.C. § 8128.

The Board has duly reviewed the case record in this appeal and finds that the Office did not abuse its discretion in denying appellant's request for merit review.

This is the second appeal in this case.<sup>1</sup> By decision dated June 11, 1998, the Board affirmed a November 7, 1995 Office decision which denied appellant's claim for an emotional condition. The facts of this case are more fully set forth in the Board's prior decision and are herein incorporated by reference.

On April 4, 1994 appellant, then a 40-year-old examiner assistant, filed a claim alleging that he sustained a heart condition and emotional illness, which he attributed to factors of his employment. By decision dated August 24, 1994, the Office denied appellant's claim on the grounds that he had failed to establish that he sustained an emotional condition in the performance of duty causally related to compensable factors of his employment. By decision dated and finalized November 7, 1995, an Office hearing representative affirmed the August 24, 1994 decision.

Following the issuance of the Board's June 11, 1998 decision, by letter dated November 30, 1998, appellant requested that the Office reconsider his claim.

By decision dated February 5, 1999, the Office denied appellant's request for reconsideration on the grounds that the submitted evidence was insufficient to warrant review of the prior decision.

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<sup>1</sup> See 49 ECAB 553 (1998).

The Code of Federal Regulations implementing 5 U.S.C. § 8128 provides that a claimant may obtain review of the merits of his claim by: (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) submitting relevant and pertinent evidence not previously considered by the Office.<sup>2</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>3</sup>

In support of his November 30, 1998 request for reconsideration, appellant stated that he disagreed with the Board's June 11, 1998 decision. Appellant submitted no relevant and pertinent evidence or relevant legal argument not previously considered by the Office and did not show that the Office erroneously applied or interpreted a specific point of law. Therefore, the Office did not abuse its discretion in denying appellant's request for reconsideration.

The decision of the Office of Workers' Compensation Programs dated February 5, 1999 is affirmed.

Dated, Washington, DC  
December 15, 2000

Michael J. Walsh  
Chairman

Priscilla Anne Schwab  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member

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<sup>2</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>3</sup> 20 C.F.R. § 10.608(b) (1999).