

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EUGENE BRUNSON and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Fort Thomas, KY

*Docket No. 98-1340; Submitted on the Record;  
Issued February 2, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
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.

On September 13, 1986 appellant, then a 37-year-old housekeeping aid, filed a claim alleging that he sustained a traumatic injury to his back on that date while putting bags in his cart. The Office accepted appellant's claim for low back strain and placed him on the periodic rolls effective September 11, 1988.

By decision dated April 29, 1996, the Office reduced appellant's compensation effective April 30, 1996 on the grounds that he had the capacity to earn wages as a part-time security guard.

In a letter dated May 23, 1996, appellant requested a hearing before an Office hearing representative. By decision dated February 18, 1997 and finalized February 19, 1997, the hearing representative affirmed the Office's April 29, 1996 decision.

In a letter dated February 4, 1998, appellant, through his representative, requested reconsideration of his claim. By decision dated February 24, 1998, the Office denied merit review of the prior decision.

The Board has duly reviewed the case record and finds that the Office did not abuse its discretion in refusing to reopen appellant's case for further review of the merits of his claim under section 8128.

The only decision over which the Board has jurisdiction is the Office's February 24, 1998 decision denying appellant's request for a review of the merits of the case. Because more than one year has elapsed between the issuance of the Office's decision dated February 18, 1997 and finalized February 19, 1997 and March 18, 1998, the date appellant filed his appeal before

the Board, the Board lacks jurisdiction to review the decision dated February 18, 1997 and finalized February 19, 1997.<sup>1</sup>

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and the specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

“(i) Showing that the Office erroneously applied or interpreted a point of law, or

“(ii) Advancing a point of law or fact not previously considered by the Office, or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”<sup>2</sup>

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.<sup>3</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>4</sup> Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.<sup>5</sup>

In the present case, the Office reduced appellant's compensation benefits effective April 30, 1997 on the grounds that he was no longer totally disabled and had the ability to earn wages as a part-time security guard. By letter dated February 4, 1998, appellant's representative requested reconsideration of the claim and stated that the decision was “contrary to law and fact.” He further indicated that additional medical evidence was forthcoming. However, appellant submitted nothing further in support of his request for reconsideration. Therefore, as appellant has not shown that the Office erroneously applied or interpreted a point of law, advanced a point of law or a fact not previously considered by the Office or submitted relevant and pertinent evidence not previously considered by the Office, he has not established that the Office erred in denying his request for a review on the merits under section 8128(a) of the Act.

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<sup>1</sup> See 20 C.F.R. §§ 501.2(c), 501.3(d).

<sup>2</sup> 20 C.F.R. § 10.138(b)(1).

<sup>3</sup> See 20 C.F.R. § 10.138(b)(2).

<sup>4</sup> *Daniel Deparini*, 44 ECAB 657 (1993).

<sup>5</sup> *Id.*

The decision of the Office of Worker's Compensation Programs dated February 24, 1998 is hereby affirmed.

Dated, Washington, D.C.  
February 2, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member