

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of McARTHUR JONES and U.S. POSTAL SERVICE,  
POST OFFICE, Los Angeles, CA

*Docket No. 00-293; Submitted on the Record;  
Issued March 21, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective June 20, 1998 on the grounds that he had no continuing disability due to his employment injury; and (2) whether 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), constituted an abuse of discretion.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. With regard to the first issue, the Board finds that the decision of the Office hearing representative dated and finalized April 7, 1999 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.<sup>1</sup>

The Board further 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.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>2</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.<sup>3</sup> To be entitled to a merit

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<sup>1</sup> The Office accepted that appellant sustained a permanently aggravated herniated disc at L4-5. By decision dated June 1, 1998, the Office terminated appellant's compensation effective June 20, 1998 on the grounds that he had no disability due to his employment injury after that date. By decision dated and finalized April 7, 1999, an Office hearing representative affirmed the Office's June 1, 1998 decision. By decision dated September 13, 1999, the Office denied appellant's request for merit review.

<sup>2</sup> 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 her own motion or on application." 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

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.<sup>4</sup> 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.<sup>5</sup>

In support of his July 1999 reconsideration request, appellant submitted reports from 1998 and 1999 in which physicians indicated that he continued to receive treatment for low back problems. None of these reports indicated that appellant continued to have residuals of his accepted employment injury, a permanently aggravated herniated disc at L4-5. Therefore, they are not relevant to the issue of whether appellant had employment-related disability on or after June 20, 1998. 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.<sup>6</sup>

In this case, appellant has not established that the Office abused its discretion in its September 13, 1999 decision by denying his request for a review on the merits of its April 4, 1999 decision under section 8128(a) of the Act, because he 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 new evidence not previously considered by the Office.

The decisions of the Office of Workers' Compensation Programs dated September 13 and April 7, 1999 are affirmed.

Dated, Washington, DC  
March 21, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>4</sup> 20 C.F.R. § 10.607(a).

<sup>5</sup> *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

<sup>6</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).