

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEVIN M. GILBERT and U.S. POSTAL SERVICE,
POST OFFICE, Portland, ME

*Docket No. 01-912; Submitted on the Record;
Issued November 1, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
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.

The Board 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.

On April 16, 1998 appellant, then a 39-year-old mailhandler, filed an occupational disease claim alleging that he sustained back problems due to performing over a period of time such work duties as lifting heavy loads, working with machines and standing on concrete floors.¹ By decision dated June 15, 1998, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence in support thereof. By decision dated September 22, 1998 and August 25, 1999, the Office affirmed its June 15, 1998 decision and, by decision dated November 8, 2000, the Office denied appellant's request for merit review.

The only decision before the Board on this appeal is the Office's decision denying appellant's request for a review on the merits of its August 25, 1999 decision. Because more than one year has elapsed between the issuance of the Office's August 25, 1999 decision and February 12, 2001, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the August 25, 1999 decision.²

¹ Appellant had previously filed a claim alleging that he had sustained a back injury when he reached into a mail cage at work on September 5, 1995. It does not appear that the Office has accepted this claim. The file from the September 5, 1995 injury claim has been combined with the file for appellant's occupational injury claim.

² See 20 C.F.R. § 501.3(d)(2).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ 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.⁴ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file his application for review within one year of the date of that decision.⁵ 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.⁶

In support of his August 2000 reconsideration, appellant submitted a September 11, 1995 report of Dr. Robert H. Pawle, an attending Board-certified family practitioner.⁷ However, this report had been previously submitted and considered by the Office. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁸ Moreover, the report is not relevant to appellant's claim as it does not contain a clear opinion that appellant sustained an employment-related injury as alleged. 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.⁹

In the present case, appellant has not established that the Office abused its discretion in its November 8, 2000 decision by denying his request for a review on the merits of its August 25, 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.

³ 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).

⁴ 20 C.F.R. §§ 10.606(b)(2).

⁵ 20 C.F.R. § 10.607(a).

⁶ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁷ Dr. Pawle noted that appellant reported experiencing back pain when reaching into a mail container at work on September 5, 1995. He noted appellant's history of past back surgery and diagnosed low back strain.

⁸ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

⁹ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The November 8, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
November 1, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member