

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL D. CLARK and U.S. POSTAL SERVICE,
POST OFFICE, KANSAS CITY, MO

*Docket No. 02-760; Submitted on the Record;
Issued December 17, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128.

On December 18, 1995 appellant, then a 48-year-old clerk, filed a notice of traumatic injury alleging that he hurt his right knee in the performance of duty. The Office accepted the claim for a right knee strain with a subsequent right knee arthroscopy performed on September 6, 1996 and a total knee replacement on August 6, 1997. Appellant worked intermittent periods of part time, limited duty beginning May 1996. On April 22, 1998 the employing establishment offered appellant a limited-duty position of modified distribution clerk, which the Office deemed to be suitable. Appellant accepted the job and began working on May 20, 1998 with the intent of a treating physician, that he gradually increase his workload to eight hours per day. Appellant, however, stopped work entirely on June 16, 1998. The employing establishment then removed him from his position effective November 27, 1998.

In an August 31, 1998 decision, the Office terminated appellant's compensation on the grounds that he refused an offer of suitable work.

Appellant requested reconsideration on May 12, 1999 and submitted additional evidence.

In a decision dated July 21, 1999, the Office denied modification of its prior decision.

On July 18, 2000 appellant filed a second reconsideration request with additional medical evidence.

In a July 31, 2000 decision, the Office once again denied modification.

Appellant's third request for reconsideration was filed on July 27, 2001.

In a decision dated October 25, 2001, the Office denied appellant's request for reconsideration on the merits.

Initially, the Board notes that the only Office decision before the Board on appeal is dated October 25, 2001, concerning the denial of appellant's reconsideration request. The Board's jurisdiction to consider and decide appeals from the final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ In this case, appellant's appeal was filed on February 19, 2002. The only Office decision issued within one year of the February 19, 2002 appeal date is the Office's decision dated October 25, 2001. The Office's decisions dated August 31, 1998, July 21, 1999 and July 31, 2000 were not filed within one year of appellant's appeal on February 19, 2002; therefore, the Board does not have jurisdiction to review the propriety of the Office's determination to terminate appellant's compensation.

The Board finds that the Office properly denied appellant's request for reconsideration on the merits under section 8128.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.² The regulations provide that a claimant may obtain review of the merits of the 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 new evidence not previously considered by the Office.³ When an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim. 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.⁴ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁵ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits."⁶

The treatment notes of appellant's physician were before the Office at the time it rendered its decision terminating appellant's compensation.

In this case, appellant did not show, in his reconsideration request, that the Office erroneously applied or interpreted a specific point of law. He failed to advance a relevant legal argument to show that the Office erred in denying his compensation. Furthermore, appellant did

¹ *James A. Price*, 51 ECAB 330 (2000); *Marilyn F. Wilson*, 51 ECAB 234 (1999).

² 5 U.S.C. § 8128; see *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

³ 20 C.F.R. § 10.606(b) (1999).

⁴ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁵ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁶ 20 C.F.R. § 10.608(b).

not submit any new and relevant evidence to warrant a merit review. The evidence submitted by appellant in support of reconsideration was already of record and, contrary to appellant's contention, has been considered by the Office. Consequently, because appellant has not satisfied the requirements of section 8128, the Office properly denied her request for reconsideration on the merits.

The decision of the Office of Workers' Compensation Programs dated October 25, 2001 is hereby affirmed.

Dated, Washington, DC
December 17, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member