

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARMANDO FLORES and U.S. POSTAL SERVICE,
POST OFFICE, Apple Valley, CA

*Docket No. 01-1421; Submitted on the Record;
Issued February 8, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has established that he sustained an injury in the performance of duty on December 15, 1999; and (2) whether the Office of Workers' Compensation Programs, by its February 7, 2001 decision, abused its discretion by refusing to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128.

On May 10, 2000 the Office denied appellant's claim for an alleged December 15, 1999 injury to his left shoulder. By letter dated May 29, 2000, appellant requested a hearing before an Office hearing representative. By decision dated November 30, 2000, an Office hearing representative affirmed the May 10, 2000 decision.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record and finds that the decision of the Office hearing representative, dated November 30, 2000, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative. The hearing representative properly concluded that based upon the evidence of record appellant failed to submit sufficient evidence to establish that he sustained an injury causally related to an alleged incident on December 15, 2000.

Following the issuance of the November 30, 2000 decision, on January 5, 2001 appellant requested reconsideration, arguing that the evidence submitted was sufficient to establish his claim and his request to subpoena before the hearing representative should have been granted. The Office explained why the evidence submitted was not sufficient to establish appellant's claim. In addition, during the hearing, the hearing representative explained that had he received appellant's request for subpoenas he would have denied it. The hearing representative did request statements from appellant's supervisor and the postmaster regarding when they became aware of appellant's claimed left shoulder injury. These arguments were resolved during the adjudication of the case. Therefore, the request for reconsideration was insufficient to warrant review of the prior decision.

The Office's regulations at 20 C.F.R. § 10.606(b)(1) provide that a claimant may obtain a review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. Section 10.608(b) provides that when 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.¹

The Board finds that appellant has not established that the Office abused its discretion in its February 7, 2001 decision by denying his request for a review of the merits of its November 30, 2000 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, that he advance a point of law not previously considered by the Office, or that he submitted new and relevant evidence not previously considered by the Office.

Accordingly, the February 7, 2001 and November 30 and May 10, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
February 8, 2002

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

¹ 20 C.F.R. § 10.608(b); *Norman W. Hanson*, 45 ECAB 430 (1994).