

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PAGE A. EPPELE and DEPARTMENT OF AGRICULTURE,  
ANIMAL & PLANT HEALTH INSPECTION SERVICE, Cary, N.C.

*Docket No. 96-1295; Submitted on the Record;  
Issued April 8, 1998*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs abused its discretion in declining to reopen appellant's claim for merit review.

On February 16, 1995 appellant, then a 40-year-old senior investigator, filed a notice of traumatic injury, claiming that he experienced severe chest pains while conducting an interview with a zoo representative on January 26, 1995. On November 9, 1995 the Office wrote to appellant requesting that he submit factual and medical evidence regarding his claim.

On December 12, 1995 the Office denied the claim on the grounds that no evidence was submitted to substantiate the alleged injury and therefore appellant had failed to meet his burden of proof in establishing entitlement to benefits.

On December 29, 1995 appellant requested reconsideration, stating that he had sent the requested information to the Office by certified mail on December 6, 1995.

On January 12, 1996 the Office denied reconsideration on the grounds that appellant's request neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

The Board finds that the Office's refusal to reopen appellant's claim for further consideration of the merits constitutes an abuse of discretion.<sup>1</sup>

Section 8128(a) of the Federal Employees' Compensation Act<sup>2</sup> provides for review of an award for or against payment of compensation. Section 10.138(b)(1) of the Office's federal

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<sup>1</sup> The Board's scope of review is limited to those final decisions issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c), 501.3(d)(2). Because appellant filed his notice of appeal on March 18, 1996, the Board has jurisdiction of both of the Office's decisions.

regulations provides, in pertinent part, that 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 issues within the decision which the claimant wishes to Office to reconsider and the reasons why the decision should be changed.<sup>3</sup>

With the written request, the claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.<sup>4</sup> Section 10.138(b)(2) of the implementing regulations provides that any application for review 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>5</sup> Abuse of discretion by the Office is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic and probable deductions from established facts.<sup>6</sup>

In this case, the record contains appellant's response to the Office's November 9, 1995 letter, which appellant signed on December 6, 1995; these documents were perforated as received by the Office on December 12, 1995. Further, the record contains a medical report from Dr. L.A. Rowe, who admitted appellant to the hospital for observation when he presented at the emergency room complaining of chest discomfort following an argument. This document was received by the Office on January 3, 1996.

Thus, appellant has submitted new and relevant evidence not previously considered by the Office, thereby complying with the requirement of section 10.138(b)(1)(iii). The Board finds that the Office abused its discretion in neglecting to review this evidence to determine if these documents were sufficient to warrant modification of its December 12, 1995 decision.

On remand, the Office should consider the evidence submitted by appellant. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193; 5 U.S.C. § 8128(a).

<sup>3</sup> *Vicente P. Taimanglo*, 45 ECAB 504, 507 (1994).

<sup>4</sup> 20 C.F.R. § 10.138(b)(1).

<sup>5</sup> 20 C.F.R. § 10.138(b)(2).

<sup>6</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The January 12, 1996 and December 12, 1995 decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.  
April 8, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member