

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NATHANIEL H. KIMBROUGH and DEPARTMENT OF THE ARMY,
CIVILIAN PERSONNEL DIRECTORATE, San Francisco, Calif.

*Docket No. 96-2405; Submitted on the Record;
Issued August 21, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the refusal of the Office of Workers' Compensation Programs, in its June 5, 1996 decision, to reopen appellant's case for further review of the merits constituted an abuse of discretion.

The Office has duly reviewed the case record in the present appeal and finds that the refusal of the Office, in its June 5, 1996 decision, to reopen appellant's case for further consideration of the merits 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,¹ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.² To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.³ 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.⁴

This is the second appeal in this case. By decision and order dated December 4, 1995,⁵ the Board found that the Office properly determined, in its November 26 and October 20, 1993

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

³ 20 C.F.R. § 10.138(b)(2).

⁴ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁵ Docket No. 94-903, issued December 4, 1995.

decisions, that appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability in June 1992 causally related to his February 21, 1985 employment injury, accepted for a lumbar strain.

The only decision before the Board on this appeal is the Office's June 5, 1996 decision denying appellant's request for a review on the merits of his claim.

In a letter to the Office dated March 7, 1996, appellant requested reconsideration of his claim. In support of his claim, he submitted evidence previously of record, his June 23, 1992 claim form and his January 20, 1993 response to a January 6, 1993 request from the Office for additional information.

By decision dated June 5, 1996, the Office denied appellant's request for reconsideration.

The submission of these documents is not sufficient to require merit review of appellant's claim in that he had previously submitted these documents to the Office and the Office considered them in rendering its prior merit decisions of November 26 and October 20, 1993. The Board has held that evidence or argument which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁶

Appellant has not established that the Office abused its discretion in its June 5, 1996 decision by denying his request for a review on the merits of his claim 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 advanced a point of law or a fact not previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office.

The June 5, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
August 21, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984).