

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALAN H. TAYLOR and DEPARTMENT OF THE NAVY,  
BOSTON NAVAL SHIPYARD, Boston, Mass.

*Docket No. 96-2063; Submitted on the Record;  
Issued June 15, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs' refusal to reopen appellant's case for reconsideration of the merits of his claim pursuant to section 8128(a) of the Federal Employees' Compensation Act constituted an abuse of discretion.

This is the fourth appeal in this case. In the first appeal, the Board issued an order dated September 25, 1981 remanding the case to the Office to follow its regulations and to advise appellant of his right to a hearing on reconsideration.<sup>1</sup> In the second appeal, the Board issued a decision and order dated December 29, 1981, in which the case was remanded to the Office for a proper development of issue of when appellant became aware of his hearing loss, to be followed by a *de novo* decision regarding whether his claim was barred by the time limitation provisions of the Act.<sup>2</sup> In the third appeal, by decision and order dated August 19, 1982, the Board set aside the Office's decision dated May 20, 1982, finding that the Office was required to further develop the issue of waiver of the one-year time period and must request information concerning appellant's reason for failing to file a claim within the one-year time period.<sup>3</sup> The facts and circumstances of the case are completely set out in those prior decisions and are hereby incorporated by reference.

On remand by letters dated September 17 and 22, 1982, the Office requested that appellant advise it why he had not filed his claim within one year after he became aware of his hearing loss and its possible causal relationship to factors of his federal employment. On October 22, 1982, appellant responded and indicated that he had not been advised by his employing establishment that he was eligible for compensation and that he had not asked his

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<sup>1</sup> Docket No. 81-1581 (issued September 25, 1981).

<sup>2</sup> Docket No. 82-277 (issued December 29, 1982).

<sup>3</sup> Docket No. 82-1276 (issued August 19, 1982).

employing establishment about filing a claim because he was not aware of such compensation. By letter dated April 14, 1983, the Office again advised appellant of the statutory regulations concerning the time limitations for filing an appeal. By letter dated April 22, 1983, appellant reiterated that he had not filed a claim within one year of May 10, 1974, the date of his last exposure, because he was unaware of the claims process.

By decision dated October 31, 1984, the Office denied appellant's claim for hearing loss on the grounds that the claim was not filed within one year of the date of last exposure or the date that appellant was aware or reasonably should have been aware of his hearing loss and its possible relationship to his employment. The Office found that appellant's supervisor had no knowledge of the injury within 48 hours and that appellant had not submitted sufficient cause or reason for his failure to file a timely claim. Therefore, the Office concluded that appellant's claim was barred by the time limitation provisions of the Act.

On November 2 and 27, 1984, appellant requested reconsideration and submitted a medical report. By letter dated December 20, 1984, the Office advised appellant that the medical evidence submitted was relevant to and had been associated with his asbestos related disease claim. The Office indicated that appellant needed to submit evidence that demonstrated that his failure to file his hearing loss claim within one year was either beyond his control or a satisfactory explanation for this failure. Appellant, through counsel, requested an extension of time to submit the necessary relevant evidence.

By decision dated January 14, 1985, the Office denied merit review of appellant's case on the grounds that the evidence submitted with his request for reconsideration was not sufficient to warrant review of the prior decision.

By letter dated January 28, 1985, appellant requested reconsideration and submitted medical evidence he believed established a correlation between his hearing loss and his federal employment.

By decision dated February 21, 1985, the Office denied merit review of appellant's claim on the grounds that evidence submitted was irrelevant and immaterial to the issue of appellant's failure to timely file his claim.

There was no further activity in this case until January 18, 1996 when appellant requested assistance with the denial of his hearing loss claim and indicated that he had additional hearing loss which required him to use hearing aids. Appellant submitted additional medical evidence addressing the causal relationship between his hearing loss and his former employment with the federal government. By letter dated March 7, 1996, the Office advised appellant that the basis for the prior denial of his claim was his failure to file within the statutory time limitations of the Act and that the adequacy of the medical evidence was never at issue since his failure to timely file precluded the adjudication of other issue.

By letter dated March 22, 1996, appellant requested reconsideration of his claim and submitted evidence relevant to the etiology of his hearing condition and the results of a recent hearing test.

By decision dated May 31, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was immaterial in nature and was not sufficient to warrant review of the prior decision.

The Board finds that the Office properly denied appellant's request for reconsideration.<sup>4</sup>

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>5</sup> 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.<sup>6</sup> Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>7</sup>

In the present case, appellant submitted medical evidence with his request for reconsideration that related his hearing impairment to causative factors from his federal employment. However, the central issue to be addressed on reconsideration was appellant's failure to file his claim within the statutory time limitations, *i.e.*, whether he could provide a satisfactory explanation for his failure to timely file his claim or establish that this failure was beyond his control. As none of the evidence submitted by appellant on reconsideration addresses the central issue, it does not constitute a basis for reopening the case. Therefore, there has been no abuse of discretion in the Office's denial of appellant's request for reconsideration.

The decision of the Office of Workers' Compensation Programs dated May 31, 1996 is hereby affirmed.

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<sup>4</sup> The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on July 2, 1996, the only decision before the Board is the Office's May 31, 1996 decision. *See* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

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

<sup>6</sup> *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

<sup>7</sup> *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

Dated, Washington, D.C.  
June 15, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member