

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT V. RAUB and DEPARTMENT OF THE AIR FORCE,
MOUNTAIN HOME AIR FORCE BASE, Idaho

*Docket No. 96-1842; Submitted on the Record;
Issued May 7, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128.

By decision dated June 29, 1990, the Office found that appellant's claim for an injury sustained on May 10, 1981 was not timely filed. The Office refused to modify this decision by a decision dated August 23, 1990. By decision dated August 16, 1991, the Office found that additional evidence submitted by appellant with a July 31, 1991 request for reconsideration was irrelevant and not sufficient to require review of its prior decision. Appellant appealed this decision to the Board which by an order dated March 10, 1992, remanded the case to the Office for assemblage of the case record, which had not been submitted to the Board, and, to protect appellant's appeal rights, for issuance of an appropriate decision.

By decision dated April 22, 1996, the Office found that additional evidence submitted by appellant was irrelevant and not sufficient to require review of its prior decision.

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain 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 10.138(b)(2) provides that 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 does not address the particular issue involved does not constitute a basis for reopening a case.¹

¹ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

In the present case, appellant's claim was denied on the basis that it was not timely filed. The additional evidence appellant submitted with his July 31, 1991 request for reconsideration and subsequent to the Board's remand of the case to the Office on March 10, 1992 consists of medical reports and notes that do not address the particular issue involved: whether the claim was timely filed. For this reason the additional evidence was properly found to be irrelevant and not sufficient to require reopening of appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128.

The decision of the Office of Workers' Compensation Programs dated April 22, 1996 is affirmed.

Dated, Washington, D.C.
May 7, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member