

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALVIN N. PHILLIPS and DEPARTMENT OF JUSTICE,  
BUREAU OF PRISONS, Atlanta, Ga.

*Docket No. 96-2348; Oral Argument Held March 11, 1998;  
Issued May 13, 1998*

Appearances: *Alvin N. Phillips, pro se; Catherine P. Carter, Esq.,  
for the Director, Office of Workers' Compensation Programs.*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

In the present case, appellant filed claims on April 21, 1978 alleging that he sustained a back injury as well as an emotional condition in the performance of duty.<sup>1</sup> The record indicates that the Office sent two letters dated October 12, 1978 to appellant. One letter (Form CA-1040) advised appellant that it did not represent a decision in his case, although it referenced the other October 12, 1978 letter (Form CA-1050), which indicated that the claim for a back injury was denied and included appeal rights.

The case lay dormant until appellant filed a claim for compensation (Form CA-7) in March 1993, claiming compensation from June 27, 1978.<sup>2</sup> Following a decision dated September 16, 1993, denying his request for a hearing, and an October 25, 1993 decision denying reconsideration, appellant filed an appeal with the Board. By order dated July 14, 1994,

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<sup>1</sup> Appellant filed both occupational and traumatic injury claims, alleging back and emotional injuries on both claims.

<sup>2</sup> The record indicates that appellant's last day in a pay status with the employing establishment was June 27, 1978. He subsequently filed for disability retirement.

the Board granted the Director of the Office's motion to remand the case for issuance of a *de novo* decision on appellant's claims.<sup>3</sup>

In a decision dated August 23, 1994, the Office denied appellant's claims for a back injury and an emotional condition. Appellant requested a hearing, and a hearing was held on January 31, 1995. By decision dated March 30, 1995, the hearing representative affirmed the August 23, 1994 decision. The Board notes that the hearing representative found that appellant had established a compensable factor of employment on February 14, 1978; the medical evidence, however, was found to be insufficient to establish an emotional condition resulting from the accepted incident.

In a letter dated March 27, 1996, appellant requested reconsideration of his claim. By decision dated May 1, 1996, the Office denied the request for reconsideration without merit review of the prior decision.

The Board has reviewed the record and finds that the Office properly refused to reopen the claim for merit review.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.<sup>4</sup> Since appellant filed his appeal on July 31, 1996, the only decision over which the Board has jurisdiction on this appeal is the May 1, 1996 decision denying his request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>5</sup> the Office's regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>6</sup> Section 10.138(b)(2) states that any application for review that does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.<sup>7</sup>

In his March 27, 1996 reconsideration request, appellant states that the employing establishment violated the 14<sup>th</sup> amendment of the U.S. Constitution, as well as the civil rights statutes 42 U.S.C § 1343 and 42 U.S.C. § 1983. Although the argument as to constitutional error and civil rights violation apparently had not been raised previously, the point of law raised must

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<sup>3</sup> Docket No. 94-310. The Director concluded that the Office had never properly issued a formal decision on either claim.

<sup>4</sup> 20 C.F.R. § 501.3(d).

<sup>5</sup> 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application)."

<sup>6</sup> 20 C.F.R. § 10.138(b)(1).

<sup>7</sup> 20 C.F.R. § 10.138(b)(2); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

have a reasonable color of validity before the Office will be required to reopen the claim for merit review.<sup>8</sup> Appellant offers no evidence or other support for his argument as to constitutional or civil rights error. Accordingly, the Board finds no reasonable color of validity with respect to this argument.

Appellant also asserts that a June 1, 1978 letter, from the warden of the employing establishment, contained inaccurate information. A review of the June 1, 1978 letter indicates that it was sent to the Office with appellant's occupational claim (Form CA-2), explaining that appellant has also filed a CA-1 for the same injuries, and that both claims would be controverted by the employing establishment. The letter does not discuss the basis for controverting the claim or the merits of the claim. Appellant states on reconsideration that his claim was denied on August 23, 1994 because of this letter, but there is no indication that the letter was relied upon by the Office in denying the claim. The Board finds that appellant has failed to explain the relevance of any alleged inaccuracies in the June 1, 1978 letter.

With respect to the evidence submitted with the March 27, 1996 reconsideration request, the letters submitted were previously of record and therefore do not constitute new evidence. The submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>9</sup> Appellant also submitted what appears to be a list of newspaper articles on the employing establishment, but this evidence does not address the specific issue involved in the case and is not a sufficient basis to reopen the claim.<sup>10</sup>

The Board therefore finds that appellant has not shown that the Office erroneously applied or interpreted a point of law, has not advanced a new and relevant point of law or fact, nor has he submitted relevant and pertinent evidence not previously considered. The Office accordingly did not abuse its discretion in denying appellant's request for reconsideration without review of the merits of the claim.

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<sup>8</sup> See *Norman W. Hanson*, *supra* note 7.

<sup>9</sup> *Saundra B. Williams*, 46 ECAB 546 (1995).

<sup>10</sup> See *Mary Lou Barragy*, 46 ECAB 781 (1995).

The decision of the Office of Workers' Compensation Programs dated May 1, 1996 is affirmed.

Dated, Washington, D.C.  
May 13, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member