

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERRY L. SMITH and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, Tex.

*Docket No. 97-808; Submitted on the Record;
Issued November 18, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs, by its January 2, 1996 decision, properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

This case has previously been before the Board on appeal. By decision and order dated January 5, 1995, the Board found that the March 16, 1992 incident occurred as alleged by appellant, but that the medical evidence was not sufficient to establish that this incident caused a personal injury.¹ By letter dated September 12, 1995, appellant requested reconsideration by the Office and submitted additional evidence. By decision dated September 15, 1995, the Office found that the additional evidence was repetitious and not sufficient to warrant review of its prior decisions. Appellant again requested reconsideration by letter dated December 20, 1995, stating that work factors were established as the cause of his injury, that he received medical treatment, that the injury was recorded, and that disability retirement had been granted. By decision dated January 2, 1996, the Office found, "Because your letter neither raised substantive legal questions nor included new and relevant evidence, it is insufficient to warrant a review of our prior decision at this time."

The only Office decision before the Board on this appeal is the Office's January 2, 1996 decision finding that appellant's application for review was not sufficient to warrant review of its prior decision. Since there is no Office decision on the merits of appellant's claim subsequent to the Board's January 5, 1995 decision and order, the Board lacks jurisdiction to review the merits of appellant's claim.² The decision issued by the Office on April 14, 1997, which found that appellant's January 21, 1997 request for reconsideration was not timely filed and did not show

¹ Docket No. 94-646.

² 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office final decision being appealed.

clear evidence of error, is null and void, as it was issued while the case was on appeal before the Board on the same issue.³

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

‘(1) end, decrease, or increase the compensation awarded; or

‘(2) award compensation previously refused or discontinued.’”

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.

In the present case, appellant did not submit any additional evidence with his December 20, 1995 request for reconsideration. This request also did not show that the Office erroneously applied or interpreted a point of law, nor did it advance a point of law or fact not previously considered by the Office. The Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

³ *Douglas E. Billings*, 41 ECAB 880 (1990).

The decision of the Office of Workers' Compensation Programs dated January 2, 1996 is affirmed.

Dated, Washington, D.C.
November 18, 1998

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member