

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES W. MILLS, SR. and U.S POSTAL SERVICE,  
POST OFFICE, Danbury, Conn.

*Docket No. 96-2256; Submitted on the Record;  
Issued October 6, 1998*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for further merit review of his claim.

This is the second appeal in this case.<sup>1</sup> By decision dated October 18, 1995, the Board affirmed the Office's December 27 and July 26, 1993 decisions, in which the Office denied appellant's claim for compensation benefits on the grounds that he had failed to establish that he sustained an injury on June 25, 1992 in the performance of duty, as alleged. The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office, in its May 20, 1996 decision, to reopen appellant's case for further consideration of the merits of his claim 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,<sup>2</sup> the Office 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 or pertinent evidence not previously considered by the Office.<sup>3</sup> To be entitled to a merit review of an Office decision denying or terminating a benefits, a claimant must also file his or her application for review within one year of the date of that decision.<sup>4</sup> When a claimant fails to meet one of the

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<sup>1</sup> See Docket No. 94-813.

<sup>2</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his motion or on application." 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

<sup>4</sup> 20 C.F.R. § 10.138(b)(2).

above standards, it is a matter of discretion of the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.<sup>5</sup>

The only decision before the Board on this appeal is the Office's May 20, 1996 decision denying appellant's request for a review on the merits of his claim. Because more than one year has elapsed between the issuance of the Office's last merit decisions on December 27 and July 26, 1993 and July 17, 1996, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review these 1993 Office decisions.<sup>6</sup> However, the Board did review these decisions at the time of its October 18, 1995 decision.

Following the Board's October 18, 1995 decision, in an undated letter received by the Office on February 26, 1996, appellant requested reconsideration of the denial of his claim.

By decision dated May 20, 1996, the Office denied modification of its denial of appellant's claim.

In support of his request for reconsideration, appellant submitted a copy of a functional capacity evaluation performed on June 25, 1992 and a copy of a bill for that evaluation. The evaluation does not mention any injury on June 25, 1992 and indicates that the purpose of the evaluation was to determine whether appellant was able to return to full duty after serving a period of time in light-duty work. Appellant also submitted two 1994 memorandums from the employing establishment regarding a light-duty assignment and a January 24, 1996 letter from appellant to his union regarding his claim. These documents do not constitute relevant and pertinent evidence not previously considered regarding the issue in this case, whether appellant sustained an injury at work on June 25, 1992, because none of these documents establishes that an injury occurred at work on that date. Appellant also did not advance a point of law or a fact not previously considered by the Office and did not show that the Office erroneously applied or interpreted a point of law. As appellant did not meet one of the three standards for reconsideration, the Office did not abuse its discretion in denying his reconsideration request on the grounds that the evidence he submitted was repetitious of evidence previously considered by the Office and did not address the critical issue in the case, whether he sustained an injury on June 25, 1992 in the performance of duty, as alleged.

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<sup>5</sup> *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

<sup>6</sup> *See* 20 C.F.R. § 501.3(d)(2).

The May 20, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
October 6, 1998

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member