

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BILLY J. EDWARDS and U.S. POSTAL SERVICE,
POST OFFICE, Little Rock, Ark.

*Docket No. 97-721; Submitted on the Record;
Issued September 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's October 11, 1996 request for reconsideration.

On August 30, 1995 appellant, then a 61-year-old letter carrier, filed a claim for compensation alleging that he sustained a hernia while in the performance of duty.

By letter dated September 22, 1995, the Office advised appellant that he needed to submit additional information regarding his claim for compensation, including a detailed physician's report, explaining how the physician believed that appellant's reported work incident caused the claimed injury.

In an October 19, 1995 decision, the Office rejected appellant's claim for compensation on the grounds that the evidence of record failed to establish that appellant had sustained an injury as alleged.

In an October 23, 1996 decision, the Office denied appellant's October 11, 1996 request for reconsideration as *prima facie* insufficient to warrant review of the October 19, 1995 decision because he failed to submit additional evidence nor raise substantive legal questions in his request for reconsideration.¹

The Board's jurisdiction is limited to final decisions of the Office issued within one year prior to the docketing of an appeal with the Board.² As appellant's appeal was filed on

¹ The Board notes that it is limited to the review of evidence that was before the Office at the time of the October 23, 1996 decision. 20 C.F.R. § 501.2(c).

² 20 C.F.R. § 501.3(d).

November 5, 1996, the Board's jurisdiction does not extend to the Office's October 19, 1995 decision but does extend to the Office's October 23, 1996 decision.

The Board finds that the Office properly denied appellant's request for reconsideration in its October 23, 1996 decision.

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 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.³

By letter dated October 11, 1996, appellant requested reconsideration of his disability claim. In support of his claim, appellant submitted the following: a September 6, 1995 surgical report from Dr. Richard C. Frazee, appellant's treating physician and a Board-certified surgeon; chart notes following appellant's September 6, 1995 hernia surgery; and an October 5, 1995 post-surgical report from him. However, Dr. Frazee did not relate the hernia condition and need for surgery to appellant's factors of employment or employment injury. His reports therefore are irrelevant to the issue in this case because it does not address the issue of causal relationship between appellant's physical condition and his employment. Therefore appellant did not submit any evidence or legal argument in support of his request for reconsideration as required by section 10.138 of the regulations.

As the only limitation on the Office's authority in the issue of reconsideration is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.⁴ There is no evidence that the Office abused its discretion in denying appellant's October 11, 1996 request for reconsideration.

³ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁴ *Daniel J. Perea*, 42 ECAB 214 (1990).

The October 23, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
September 24, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member