

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of DONALD CHUMLEY and DEPARTMENT OF THE ARMY,  
AMMUNITION PLANT, McAlester, OK

*Docket No. 98-419; Submitted on the Record;  
Issued December 13, 1999*

---

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim under 5 U.S.C. § 8128(a).

In the present case, the Office accepted that appellant sustained ankle injuries in the performance of duty on June 28, 1988. By decision dated June 20, 1996, the Office terminated compensation benefits effective June 22, 1996, on the grounds that the weight of the medical evidence established that residuals of the employment injury had ceased.

In a letter dated June 15, 1997, appellant requested reconsideration of his claim. By decision dated July 29, 1997, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.<sup>1</sup>

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.<sup>2</sup> Since appellant filed his appeal on November 7, 1997, the only decision over which the Board has jurisdiction on this appeal is the July 29, 1997 decision denying his request for reconsideration.

The Board has reviewed the record and finds that the Office properly denied appellant's request for reconsideration.

---

<sup>1</sup> A nonmerit review is a limited review to determine if the evidence is sufficient under 20 C.F.R. § 10.138(b)(1) to reopen the case for merit review, and the only right of appeal is to the Board. A merit review is a determination, pursuant to the discretionary authority granted by 5 U.S.C. § 8128(a), of whether the evidence is sufficient to modify the prior decision and appeal rights include a one-year period to request reconsideration or appeal to the Board; *see* 20 C.F.R. § 10.138; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.7-8. (June 1997).

<sup>2</sup> 20 C.F.R. § 501.3(d).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>3</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>4</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>5</sup>

In this case, the Office terminated compensation on the grounds that the weight of the medical evidence, as represented by Dr. Phillip L. McCown, an orthopedic surgeon serving as a second opinion physician, established that residuals of appellant's employment injuries had ceased. Appellant's June 15, 1997 request for reconsideration asserts that the Office erred in finding that Dr. McCown represented the weight of the evidence, without proving any supporting evidence or explanation. Appellant has not shown that the Office erroneously applied or interpreted a point of law,<sup>6</sup> submitted new and relevant evidence, nor advanced a new and relevant point of law or fact. There is no indication that any of the requirements of section 10.138(b)(1) have been met in this case. Accordingly, the Board finds that the Office properly denied appellant's request for reconsideration without reopening the case for merit review.

---

<sup>3</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>4</sup> 20 C.F.R. § 10.138(b)(1).

<sup>5</sup> 20 C.F.R. § 10.138(b)(2); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

<sup>6</sup> *See Norman W. Hanson*, *supra* note 5.

The decision of the Office of Workers' Compensation Programs dated July 29, 1997 is affirmed.

Dated, Washington, D.C.  
December 13, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member