

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES H. PRY and U.S. POSTAL SERVICE,
POST OFFICE, Oklahoma City, OK

*Docket No. 98-740; Submitted on the Record;
Issued December 22, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue on appeal is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128(a).

On November 19, 1993 appellant, then a 33-year-old postal inspector, injured his back when he was involved in a car accident in the performance of duty. The Office accepted the claim for cervical and lumbar strain. Appellant received compensation for intermittent periods of wage loss. He subsequently resigned from the employing establishment on December 23, 1994.¹

Appellant filed a Form CA-7 requesting a schedule award for permanent impairment related to his work injury.

In a decision dated July 30, 1996, the Office issued a schedule award for 14 percent permanent impairment of the right lower extremity. The period of the award was from June 6, 1996 to March 25, 1997.

By letter dated November 18, 1996, appellant requested review of his case on the written record.

In a January 16, 1997 decision, the Office denied appellant's request for a written record review on the grounds that the request was not timely filed. The Office advised appellant that the issue in the case could be equally well addressed through the reconsideration process.

In a June 9, 1997 letter, appellant filed a request for reconsideration. He submitted no new evidence, but requested information as to how the Office determined his schedule award.

¹ Appellant was unable to return to work because he had lifting restrictions which the employing establishment would not accommodate.

In a decision dated July 22, 1997, the Office denied appellant's request for reconsideration on the merits. The Office, however, provided further explanation as to why appellant's schedule award was calculated to be 14 percent of the right lower extremity.²

The Board notes that it only has jurisdiction over decisions issued by the Office within one year of appellant's appeal.³ Since appellant filed his appeal on May 13, 1998, the Board does not have jurisdiction to consider the Office's July 30, 1996 decision granting appellant a schedule award nor the Office's January 16, 1997 decision to deny appellant's request for a written review of the record. The only decision before the Board in this appeal is the Office's July 22, 1997 decision denying appellant's request for reconsideration on the merits.

The Board finds that the Office properly denied appellant's request for reconsideration on the merits under section 8128.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.⁴ The regulations provide 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 a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁵ 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.⁶ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁷ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁸ Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128 of the Act.⁹

² Appellant questioned why he did not receive a 28 percent impairment for the whole body as recommended by his treating physician. The Office explained that the Office did not pay for whole body impairment and that his award was limited to scheduled members. The Office further explained that it relied on the 14 percent rating of the Office medical adviser since appellant's attending physician had not provided an impairment rating with references to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

³ 20 C.F.R. §§ 501.3(d)(2).

⁴ 5 U.S.C. § 8128; *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁵ 20 C.F.R. § 10.138(b)(1).

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁸ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁹ *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

In the instant case, in conjunction with his reconsideration request, appellant sought information as to how the Office calculated his 14 percent schedule award. Appellant did not show that the Office erroneously applied or interpreted a point of law, nor did he advance a point of law not previously considered by the Office. Appellant also failed to submit any new and relevant evidence. Inasmuch as appellant did not meet at least one of the three requirements necessary for a merit review, the Office properly denied his request for reconsideration.

The decision of the Office of Workers' Compensation Programs dated July 22, 1997 is hereby affirmed.

Dated, Washington, D.C.
December 22, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member