

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KHAM BANDITH VORAPANYA and DEPARTMENT OF LABOR,
WOLF CREEK JOB CORPS, Gilde, OR

*Docket No. 97-2501; Submitted on the Record;
Issued July 22, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly reduced appellant's compensation benefits to the pay rate mandated by statute for a Job Corps enrollee; and (2) whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On February 22, 1990 appellant, then an 18-year-old forestry aid student with the Job Corps, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on February 18, 1990 he experienced back pain in the performance of duty. The Office accepted appellant's claim for low back strain, radiculopathy of the spine, and depression and authorized a laminectomy. The Office placed appellant on the periodic rolls effective May 5, 1991.¹

In a notice dated October 17, 1996, the Office informed appellant that it proposed to reduce his compensation to the minimum pay rate of a GS-2 as required by the provisions of 5 U.S.C. § 8143. The Office noted that it had erroneously paid appellant at a rate of 75 percent of a GS-2, Step 1 with locality pay. The Office further indicated that it was waiving the overpayment created by its error in determining his correct pay rate.

By decision dated January 30, 1997, the Office finalized its reduction in appellant's compensation effective February 2, 1997. In nonmerit decisions dated February 28 and April 30, 1997, the Office denied review of its January 30, 1997 decision.

The Board finds that the Office properly reduced appellant's compensation benefits to the pay rate mandated by statute for a Job Corps enrollee.

¹ Appellant was terminated from the Job Corps effective September 10, 1990.

Compensation under the Federal Employees' Compensation Act² is payable only under its terms, which are specific as to the method and amount of payment of compensation.³ Neither the Office nor the Board has the authority to enlarge the terms of the Act or to make an award of benefits under any terms other than those specified in the statute.⁴ For a Job Corps enrollee, section 8143 of the Act provides in pertinent part:

“(a) Subject to the provisions of this subsection, this subchapter applies to an enrollee in the Job Corps, except that compensation for disability does not begin to accrue until the day after the date on which the injured enrollee is terminated. In administering this subchapter for an enrollee covered by this subsection--

(1) the monthly pay of an enrollee is deemed that received at the minimum rate for GS-2....”⁵

In the instant case, the Office improperly paid appellant compensation benefits based on a pay rate of 75 percent of a GS-2, Step 1 with locality pay. The Act specifies that the pay rate of a Job Corps enrollee is the minimum rate of a GS-2, Step 1.⁶ Consequently appellant, with no dependents, is entitled to 66 2/3 percent of the pay rate of a GS-2, Step 1 without locality pay. The Office, therefore, properly reduced appellant's compensation in accordance with the provisions of the Act.

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

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by written request to the Office identifying the decision and the specific issue(s) within the decision which claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

“(i) Showing that the Office erroneously applied or interpreted a point of law, or

“(ii) Advancing a point of law or fact not previously considered by the Office, or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”⁷

² 5 U.S.C. §§ 8101-8193.

³ *Helen A. Pryor*, 32 ECAB 1313 (1981).

⁴ *Dempsey Jackson, Jr.*, 40 ECAB 942 (1989).

⁵ 5 U.S.C. § 8143.

⁶ The minimum compensation provisions of sections 8112 and 8133(e) do not apply to Job Corps enrollees. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Special Act Cases*, Chapter 2.1700.6(I)(4) (June 1995).

⁷ 20 C.F.R. § 10.138(b)(1).

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.⁸ Evidence that repeats or duplicates evidence already in the case record has no evidentiary values and does not constitute a basis for reopening a case.⁹ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.¹⁰

In his February 4, 1997 request for reconsideration, appellant expressed his disagreement with the Office's reduction of his compensation. Appellant, however, failed to raise any specific error of law or fact on behalf of the Office sufficient to require reopening of the case for merit review.

Appellant again requested reconsideration in a letter to the Office from his congressman dated April 14, 1997. Appellant enclosed factual evidence previously of record. As this duplicated evidence already contained in the case record it does not constitute a basis for reopening appellant's case for merit review under 20 C.F.R. § 10.138.¹¹

Abuse of discretion can generally only be 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.¹² Appellant has made no such showing here and thus the Board finds that the Office properly denied his application for reconsideration of his claim.

⁸ See 20 C.F.R. § 10.138(b)(2).

⁹ *Daniel Deparini*, 44 ECAB 657 (1993).

¹⁰ *Id.*

¹¹ *Richard L. Ballard*, 44 ECAB 146 (1992).

¹² *Rebel L. Cantrell*, 44 ECAB 660 (1993).

The decisions of the Office of Workers' Compensation Programs dated April 30, February 28 and January 30, 1997 are hereby affirmed.

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

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member