

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES R. YETMAN and U.S. POSTAL SERVICE,  
POST OFFICE, Kansas City, Mo.

*Docket No. 98-246; Submitted on the Record;  
Issued July 9, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs, by its March 3, 1997 decision, abused its discretion by refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a); and (2) whether the Office, by its July 15, 1997 decision, abused its discretion by refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record in the present appeal and finds that in its decisions dated March 3 and July 15, 1997, the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> As appellant filed his appeal with the Board on October 21, 1997, the only decisions properly before the Board are the March 3 and July 15, 1997 decisions denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's 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 and pertinent evidence not previously considered by the Office.<sup>2</sup> When a claimant fails to meet at least one of

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<sup>1</sup> *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.3(d)(c), 501.3(d)(2).

<sup>2</sup> 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128.

the above standards, the Office will deny the application for review without reviewing the merits of the claim.<sup>3</sup>

In his December 4, 1996 request for reconsideration, appellant did not show that the Office erroneously applied or interpreted a point of law, nor did he advance a point of law or a fact not previously considered by the Office. In support of his reconsideration request, appellant submitted radiology reports; an operative report from October 12, 1995 surgery; office notes by Dr. Gordon Eller and Dr. Eller's March 11, 1996 note stating that, "Although the patient has had previous problems with his knee, I feel that this current problem is related to his injury." As none of the evidence provided a medical opinion with supporting rationale addressing a causal relationship between appellant's diagnosed condition or disability for work and the October 7, 1995 employment-related incident, particularly since appellant has a preexisting left knee condition, the Office properly found that the evidence submitted in support of the December 4, 1996 request for reconsideration was irrelevant to the issue and insufficient to warrant review of the prior decision.

In his undated request for reconsideration, received by the Office on April 11, 1997, appellant did not show that the Office erroneously applied or interpreted a point of law, nor did he advance a point of law or a fact not previously considered by the Office. In support of his reconsideration request, appellant submitted radiology reports; an operative report from his October 12, 1995 surgery; office notes by Dr. Eller; and Dr. Eller's March 11, 1996 note; all of which were previously submitted and considered.<sup>4</sup> The new evidence submitted consists of a page 259 marked employee benefits; and a May 21, 1997 report by Dr. Eller. The new evidence failed to address the relevant issue of whether appellant's diagnosed condition or disability for work is causally related to the October 7, 1995 employment-related incident. The Office properly found that the new evidence submitted was cumulative in nature and, therefore, insufficient to warrant review of the prior decision.

As appellant's December 4, 1996 request for reconsideration and his undated request for reconsideration received by the Office on April 11, 1997 do not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying the requests.

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

<sup>4</sup> See *Eugene F. Butler*, 36 ECAB 393, 398 (1984) (finding that 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.)

The decisions of the Office of Workers' Compensation Programs dated July 15 and March 3, 1997 are affirmed.

Dated, Washington, D.C.  
July 9, 1999

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member