

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID CARIOTA and DEPARTMENT OF VETERANS AFFAIRS,
LONG ISLAND NATIONAL CEMETERY, Farmingdale, N.Y.

*Docket No. 97-1557; Submitted on the Record;
Issued June 10, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs refusal to reopen appellant's case for merit review under 5 U.S.C. § 8128(a) constituted an abuse of discretion in its decision of January 2, 1997.

On May 23, 1995 appellant, then a 45-year-old cemetery administrator, filed an occupational disease claim asserting that several medical conditions were causally related to factors of his federal employment. By decision dated October 11, 1995, the Office denied appellant's claim for compensation benefits on the grounds that fact of injury was not established as the evidence of record failed to establish that a medical condition resulted from the claimed events and incidents.

By letter dated September 30, 1996, appellant, through his attorney, requested reconsideration of his claim. The attorney stated that appellant was claiming that his medical disability was a result of the stresses of his regular duties, which included being on call 24 hours a day and having to reside at the cemetery itself. The attorney contended that the additional duties resulting from appellant's promotion from GS-12 to GS-14 also contributed to the deterioration of appellant's health. No additional medical evidence was submitted.

By decision dated January 2, 1997, the Office denied appellant's request for reconsideration without reviewing the merits of the claim, on the grounds that the arguments advanced were immaterial and insufficient to warrant review of its prior decision.

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

The only decision before the Board on this appeal is the January 2, 1997 Office decision which found that appellant, in his request for reconsideration, had not submitted sufficient evidence to warrant review of the Office's October 11, 1995 decision. Since more than one year

has elapsed between the issuance of the October 11, 1995 decision and April 8, 1997, the date, appellant filed his appeal with the Board, the Board lacks jurisdiction to review the October 11, 1995 decision.¹

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Under 20 C.F.R § 10.138(b)(1), a claimant may obtain review of the merits of his or her 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.”²

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.³ 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.⁴ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁵

In the present case, the Office denied appellant's claim on the grounds that medical evidence did not establish that his condition(s) resulted from the claimed events and incidents of his federal employment. In analyzing the contentions made by appellant's attorney in support of his reconsideration request, the Office undertook a limited review of the case file to assess the relevancy and value of the evidence submitted in support of the request for reconsideration. The Board notes that the contentions made by appellant's attorney were previously considered by the Office in its October 11, 1995 decision, which, as previously stated, the Board lacks jurisdiction to review. Inasmuch as the arguments were previously addressed by the Office, they are cumulative in nature and, therefore, insufficient to warrant a merit review of the case.⁶ Thus, appellant did not submit relevant and probative evidence or sufficient arguments, his reconsideration request was properly denied.

¹ See 20 C.F.R. § 501.3(d)(2).

² 20 C.F.R. § 10.138(b)(1).

³ See 20 C.F.R. § 10.138(b)(2).

⁴ *Daniel Deparini*, 44 ECAB 657 (1993).

⁵ *Id.*

⁶ *Eugene F. Butler*, 36 ECAB 393 (1984).

The decision of the Office of Workers' Compensation Programs dated January 2, 1997 is hereby affirmed.

Dated, Washington, D.C.
June 10, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member