

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES D. McGRATH, SR. and U.S. POSTAL SERVICE,
POST OFFICE, Green Bay, WI

*Docket No. 97-1851; Submitted on the Record;
Issued November 15, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

On October 20, 1995 appellant, then a 50-year-old supervisor of customer services, filed a traumatic injury claim alleging that he sustained an employment-related injury when he was working as the examiner on a route inspection for a park and loop route on October 18, 1995 and he experienced chest pain. Appellant stopped work on October 19, 1995 and returned to work on October 20, 1995.

In a letter dated December 1, 1995, the Office requested that appellant submit additional factual and medical evidence in support of his claim.

In a medical report dated October 19, 1995, appellant's treating physician¹ stated that appellant has several cardiac risk factors including a history of borderline hypertension, chronic venous problems in both lower extremities and obesity. The physician noted that appellant presented with an atypical chest discomfort problem which lasted approximately 24 hours. The physician also noted that appellant developed the onset of "sharp" dagger-like chest pain lasting seconds at a time while on a carrier inspection and that the discomfort resolved with rest. Appellant also awoke at approximately 2 a.m. last night with a feeling of palpitations as well as a crushing feeling across his interior chest and a feeling of sweatiness. The physician noted that this too resolved without therapy. The physician noted that today appellant was counting mail at work and walking short distances back and forth when he again developed a feeling of sweatiness and a pressure-like sensation in the bilateral anterior chest. Again, the feeling rapidly decreased with rest. The physician stated that appellant was previously seen by Dr. Kubsch and found to have a normal resting electrocardiogram and was sent for evaluation here. The

¹ Signature is not legible.

physician noted his findings on examination and stated that “Although some episodes of appellant’s discomfort sound anginal in quality, his sharp dagger-like and very transient chest discomfort episodes while walking are very atypical for angina.” The physician opined that it was “certainly possible that appellant has underlying coronary artery disease and may be manifesting exertional angina as he is normally inactive at work. However, because appellant has chronic lower extremity venous problems and the sudden onset of chest discomfort as well as a resting sinus tachycardia, denotes a possibility of a pulmonary embolism, which needs to be considered. It is also possible that appellant was having some type of atypical chest discomfort from the chest wall related to his excessive weight.”

In a note dated January 8, 1996, from Dr. Kenneth R. Kubsch, a Board-certified internist, the physician stated that appellant had sudden onset anterior chest pain (new) with tachycardia. He diagnosed possible unstable angina and referred appellant to cardiology.

In a February 1, 1996 decision, the Office denied appellant’s claim on the grounds that the medical evidence fails to establish that the claimed condition or disability is causally related to the October 18, 1995 injury.

In an October 13, 1996 letter, appellant requested reconsideration and indicated that prior to the chest pain he experienced, he had tripped on three separate occasions while on the route inspection.

In a decision dated December 23, 1996, the Office denied reconsideration on the grounds that the evidence appellant submitted was of an immaterial nature.

The Board finds that the Office properly refused to reopen appellant’s case for further consideration of the merits of his claim under 5 U.S.C. § 8128.

The only decision before the Board on this appeal is the December 23, 1996 Office decision, which found that appellant, in his request for reconsideration, had not submitted sufficient evidence to warrant review of the Office’s February 1, 1996 decision. Since more than one year has elapsed between the issuance of the February 1, 1996 decision and March 21, 1997, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the February 1, 1996 decision.²

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act,³ 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.⁴ To be entitled to a merit review of an Office

² See 20 C.F.R. § 501.3(d)(2).

³ 5 U.S.C. § 8101 *et seq.* Under section 8128 of the Act, “[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.” 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁵ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁶

Appellant submitted a letter indicating that prior to experiencing his chest pains, he tripped on three separate occasions while on the route inspection. The addition of facts leading up to appellant's chest pains does not relate to the relevant issue of the present case, *i.e.*, whether appellant has submitted sufficient rationalized medical evidence to establish that he sustained an employment-related cardiac condition. In this regard, the Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁷

In the present case, appellant has not established that the Office abused its discretion in its December 23, 1996 decision by denying appellant's request for a review on the merits of its decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, that he advanced a point of law or a fact not previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office.

The decision of the Office of Workers' Compensation Programs dated December 23, 1996 is affirmed.

Dated, Washington, D.C.
November 15, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁷ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).