

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLEN L. OLSON and DEPARTMENT OF THE AIR FORCE,
St. Paul, MN

*Docket No. 97-2832; Submitted on the Record;
Issued November 9, 1999*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's May 15, 1997 request for reconsideration.

In a decision dated May 28, 1997, the Office denied appellant's May 15, 1997 request for reconsideration on the grounds that the evidence submitted in support thereof was irrelevant and immaterial and insufficient to warrant a review of its prior decision. The Office noted that on May 7, 1980 it had reduced appellant's compensation because the position of telephone solicitor reasonably and fairly represented his wage-earning capacity. Appellant requested reconsideration 17 years later arguing that he did not receive his appeal rights when the Office reduced his compensation. To support his request, appellant submitted photocopies of form letters he received in January and May 1970, as well as an itemized medical bill showing charges for services in November 1979. One of the photocopies he submitted was of the Office's final decision of May 7, 1980. In that decision, the Office informed appellant that it was reducing his compensation because the medical evidence showed that he was no longer totally disabled for work due to the effects of his employment injury and because he had the capacity to earn wages as a telephone solicitor. The photocopy that appellant submitted to support his request for reconsideration showed no appeal rights.

The Board finds that the Office properly denied appellant's May 15, 1997 request for reconsideration.

To require the Office to reopen a case for reconsideration, a claimant must submit relevant evidence not previously of record or advance legal contentions not previously considered. Where such evidence or contentions have not been presented, it is a matter of

discretion on the part of the Office whether to reopen a case for further consideration under 5 U.S.C. § 8128.¹

Appellant contended that the Office failed to notify him of his appeal rights when it issued its final decision of May 7, 1980. To support his contention, he submitted photocopies of letters he received from the Office on or about that date, including a copy of the Office's May 7, 1980 decision. The mere fact that these photocopies themselves show no appeal rights is no proof that the Office failed to provide him a statement of such rights. The record discloses that a statement of appeal rights was, in fact, printed on the back of the Office's May 7, 1980 decision. If the decision appellant received had no such statement on the back, then only the original, signed document received by appellant would show such an error. A photocopy of the front of the Office's decision is of no evidentiary value in establishing the error alleged.

As the evidence appellant submitted to support his contention is not of a substantive or probative nature, the Board finds that the Office did not abuse its discretion in denying his request for reconsideration.²

The May 28, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

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

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

¹ *Karl Doern*, 28 ECAB 173 (1977).

² *See John D. Baskette*, 30 ECAB 761 (1979) (finding that evidence which is of no evidentiary value is *prima facie* insufficient to warrant a review of the merits of a case).