

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROGER C. KENNEDY and U.S. POSTAL SERVICE,  
POST OFFICE, Cincinnati, OH

*Docket No. 98-694; Submitted on the Record;  
Issued October 4, 1999*

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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 request for reconsideration of his claim under 5 U.S.C. § 8128.

On January 22, 1996 appellant, then a 49-year-old mail carrier, filed a claim for a traumatic injury to the bicep muscle of his left arm, which he alleged occurred on January 16, 1996 while "lifting a tray of flats from my letter case to my tub of parcels." On the reverse side of the claim form, the employing establishment controverted appellant's claim on the grounds that appellant related to his supervisor that he injured his left arm shoveling snow during the weekend.

In a decision dated February 27, 1996, the Office denied appellant's claim on the grounds that the evidence failed to establish fact of injury. The Office found that appellant had not established the occurrence of the employment incident as the record contained inconsistencies regarding the time, place and manner of injury. In a decision dated September 23, 1996, the Office denied modification of its prior decision and, by decision dated November 18, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and thus insufficient to warrant review of the prior decision.

The Board has duly reviewed the case record and finds that the Office did not abuse its discretion in refusing to reopen appellant's case for further review of the merits of his claim under section 8128.

The only decision over which the Board has jurisdiction is the Office's November 18, 1997 decision, denying appellant's request for a review of the merits of the case. Because more than one year has elapsed between the issuance of the Office's decision dated September 23,

1996 and December 30, 1997, the date appellant filed his appeal before the Board, the Board lacks jurisdiction to review the decision dated September 23, 1996.<sup>1</sup>

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.”<sup>2</sup>

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

In the present case, the Office denied appellant's claim for compensation on the grounds that he did not establish the occurrence of the January 16, 1996 employment incident, due to factual inconsistencies regarding the manner in which he injured his arm. In support of his request for reconsideration, appellant's representative maintained that appellant accurately portrayed the occurrence of his injury and reviewed the evidence supporting his version of events. The Office, however, previously considered and rejected appellant's argument. Thus, appellant's contentions are repetitious and do not constitute legal argument sufficient to require reopening of the case for merit review.

As 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.<sup>6</sup> Appellant has made no such showing here and thus the Board finds that the Office properly denied his application for reconsideration of his claim.

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<sup>1</sup> See 20 C.F.R. §§ 501.2(c), 501.3(d).

<sup>2</sup> 20 C.F.R. § 10.138(b)(1).

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

<sup>4</sup> *Daniel Deparini*, 44 ECAB 657 (1993).

<sup>5</sup> *Id.*

<sup>6</sup> *Rebel L. Cantrell*, 44 ECAB 660 (1993).

The decisions of the Office of Workers' Compensation Programs dated November 18, 1997 is hereby affirmed.

Dated, Washington, D.C.  
October 4, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member