

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of CHARLES ROBINSON, JR. and U.S. POSTAL SERVICE,  
POST OFFICE, Little Rock, AR

*Docket No. 98-705; Submitted on the Record;  
Issued October 4, 1999*

---

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to further review the merits of appellant's claim under 5 U.S.C. § 8128.

In the instant case, the Office accepted that appellant sustained a right shoulder sprain and a sprain of the cervical spine due to a traumatic injury on September 11, 1995. In a claim for continuing compensation on account of disability (Form CA-8) dated January 14, 1988, appellant requested compensation for a loss of night differential and Sunday premium pay due to a change in his work schedule as a result of his employment injury. In a form report dated May 21, 1990, the employing establishment notified the Office that appellant's compensation for Sunday premium pay and night differential pay should be terminated as he had resumed his regular schedule.<sup>1</sup>

By decision dated July 13, 1993, the Office found that appellant was not entitled to compensation for night differential pay and Sunday premium pay.

In a decision dated June 2, 1994, a hearing representative affirmed the Office's finding that appellant was not entitled to compensation for loss of Sunday premium pay and/or night differential pay beginning May 21, 1990. The hearing representative remanded the case for further development regarding the issue of appellant's entitlement to Sunday premium pay and night differential pay for the period May 22, 1987 to October 20, 1989 and for recalculation of appellant's pay rate.

By decision dated July 27, 1994, the Office found that appellant was entitled to compensation for loss of Sunday premium pay and night differential pay for the period May 20, 1987 to October 20, 1989.

---

<sup>1</sup> By decision dated November 14, 1989, the Office issued appellant a schedule award for a 13 percent impairment of his right arm. The period of the award ran from October 22, 1989 to August 1, 1990.

On November 8, 1994 appellant requested compensation for loss of Sunday premium pay and night differential pay from November 2, 1992 to the present. In a decision dated September 22, 1995, the Office denied appellant's claim on the grounds that the evidence established that his change in work hours beginning October 30, 1992 was voluntary and thus he was not entitled to compensation for the loss of Sunday premium pay and night differential pay.

Appellant requested a hearing, which was held on May 21, 1996. In a decision dated July 30, 1996 and finalized August 2, 1996, a hearing representative affirmed the Office's September 22, 1995 decision.

In a letter received by the Office on September 3, 1997, appellant requested reconsideration of his claim and submitted additional evidence. By decision dated September 26, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and immaterial and thus 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 Office's September 26, 1997 decision finding that the evidence submitted in support of appellant's request for reconsideration was not sufficient to warrant review of its prior decision. Since more than one year has elapsed between the date of the Office's most recent merit decision dated July 30, 1996 and finalized August 2, 1996 and the filing of appellant's appeal on December 30, 1997, the Board lacks jurisdiction to review the merits of appellant's claim.<sup>2</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>3</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

---

<sup>2</sup> 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed.

<sup>3</sup> 20 C.F.R. § 10.138(b)(1).

this section will be denied by the Office without review of the merits of the claim.<sup>4</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>5</sup> Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.<sup>6</sup>

In the instant case, the Office denied appellant's request for compensation for loss of Sunday premium pay and night differential pay beginning November 2, 1992 on the grounds that the change in position was voluntary rather than a consequence of his accepted employment injury. In support of his request for reconsideration, appellant submitted a copy of the October 30, 1992 limited-duty job offer from the employing establishment and a note regarding the start date of his new position. However, as this evidence duplicated evidence already contained in the case record it does not constitute a basis for reopening appellant's case for merit review under 20 C.F.R. § 10.138.<sup>7</sup>

Appellant further submitted a statement from a coworker, Alvin L. Terry, Jr., who related that he was reassigned by the employing establishment following an employment injury and that he received compensation from the Office for a loss of Sunday premium pay. Mr. Terry further argued that the employing establishment misled the Office by contending that appellant's position change was voluntary. However, as discussed above, evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>8</sup> The issue of whether appellant sustained a compensatory loss due to his transfer to a different position is a factual question which can only be resolved by the submission of evidence specific to appellant. Thus, Mr. Terry's statement does not constitute relevant and probative evidence sufficient to warrant a reopening of appellant's case for a review of the merits.

As appellant has not established that the Office erroneously applied or interpreted a point of law, advanced a point of law or fact not previously considered by the Office or submitted relevant and pertinent evidence not previously considered by the Office, he has not established that the Office abused its discretion in denying his request for review under section 8128 of the Act.

---

<sup>4</sup> See 20 C.F.R. § 10.138(b)(2).

<sup>5</sup> *Daniel Deparini*, 44 ECAB 657 (1993).

<sup>6</sup> *Id.*

<sup>7</sup> *Richard L. Ballard*, 44 ECAB 146 (1992).

<sup>8</sup> See *Dominic E. Coppo*, 44 ECAB 484 (1993); 20 C.F.R. § 10.138(b)(1)(iii).

The decision of the Office of Workers' Compensation Programs dated September 26, 1997 is hereby affirmed.

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

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Bradley T. Knott  
Alternate Member