

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGORY KULA and U.S. POSTAL SERVICE,
POST OFFICE, Farmington Hills, MI

*Docket No. 98-1302; Submitted on the Record;
Issued October 1, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

In the present case, appellant filed a claim alleging that he sustained a lower back injury causally related to factors of his federal employment. By decision dated February 15, 1996, the Office denied the claim on the grounds that the medical evidence was insufficient to establish an injury causally related to the identified employment factors. In a decision dated December 10, 1996, an Office hearing representative affirmed the prior decision.

By letter dated December 7, 1997, appellant requested reconsideration of his claim. In a decision dated December 12, 1997, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.¹

The Board has reviewed the record and finds that the Office properly refused to reopen the claim for merit review.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.² Since appellant filed his appeal on March 19, 1998, the only decision

¹ A nonmerit review is a limited review to determine if the evidence is sufficient under 20 C.F.R. § 10.138(b)(1) to reopen the case for merit review and the only right of appeal is to the Board. A merit review is a determination, pursuant to the discretionary authority granted by 5 U.S.C. § 8128(a), of whether the evidence is sufficient to modify the prior decision and appeal rights include a one-year period to request reconsideration or appeal to the Board; *see* 20 C.F.R. § 10.138; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.7-8. (June 1997).

² 20 C.F.R. § 501.3(d).

over which the Board has jurisdiction on this appeal is the December 12, 1997 decision denying his request for reconsideration.

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 provides that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or interpreted a point of law, or (2) advancing a point of law or fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ Section 10.138(b)(2) states that any application for review that does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.⁵

In this case, appellant's December 7, 1997 request for reconsideration alleged that his successor on the job also sustained a back injury that was accepted by the Office, and a coworker had been referred to a second opinion physician by the Office, but appellant's requests had been denied. Appellant did not, however, submit any new medical evidence with his request for reconsideration. The decisions denying his claim were based on appellant's failure to submit probative medical evidence on causal relationship between a diagnosed condition and the identified employment factors of lifting, pushing and pulling heavy containers. Section 10.138(b)(1)(iii) provides that appellant must submit new and relevant evidence to require reopening his case for merit review. Appellant has not submitted new and relevant medical evidence, nor has he met any of the requirements of section 10.138(b)(1). Accordingly, the Board finds that the Office properly refused to reopen the case for merit review in this case.

³ 5 U.S.C. § 8128(a) (providing that "[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.")

⁴ 20 C.F.R. § 10.138(b)(1).

⁵ 20 C.F.R. § 10.138(b)(2); *see also* *Norman W. Hanson*, 45 ECAB 430 (1994).

The decision of the Office of Workers' Compensation Programs dated December 12, 1997 is affirmed.

Dated, Washington, D.C.
October 1, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member