

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE V. BAKUNAS and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Cleveland, OH

*Docket No. 99-630; Submitted on the Record;
Issued April 12, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

The Board has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretion in denying appellant's request for review of the merits of his claim.

Appellant, a mailhandler, sustained a left inguinal hernia on October 8, 1996. The Office accepted the claim and authorized surgical repair. Appellant returned to full duty on November 26, 1996. On July 19, 1997 appellant filed a claim for a recurrence of disability alleging that he stopped work on that date due to his October 1996 employment injury. The claim for a recurrence of disability was denied by the Office on October 21, 1997 on the grounds that appellant submitted insufficient medical evidence to demonstrate a relationship between the original injury of October 8, 1996 and the recurrence of disability on July 19, 1997. In an August 5, 1998 letter, appellant requested reconsideration. Appellant contended that the Office did not thoroughly review an August 22, 1997 report from Dr. Roger Classen, an osteopath, which was previously of record. New evidence did not accompany the request. In an August 17, 1998 decision, the Office denied appellant's request for reconsideration, without reviewing the merits of the claim on the grounds that the evidence submitted was of record, previously considered and repetitious.

The jurisdiction of the Board is limited to final decisions of the Office issued within one year of the filing of the appeal.¹ Since appellant filed his appeal on November 17, 1998 the only decision over which the Board has jurisdiction on this appeal is the August 17, 1998 Office decision, which denied appellant's request for a merit review of his claim.

¹ See 20 C.F.R. §§ 501.2(c), 501.3(d).

Section 10.138(b)(1) of the Code of Federal 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.”² Section 10.138(b)(2) provides that when an application for review of the merits of a claim which does not meet at least one of these three requirements the Office will deny the application for review without review of the merits of the claim.³

In his request for reconsideration, appellant did not submit any new evidence nor did appellant specify any erroneous application of law or advance a point of law or fact not previously considered by the Office. As the issue in this case is medical in nature, the submission of new medical evidence addressing whether employment factors caused or aggravated the claimed condition was necessary to require the Office to reopen the claim for a merit review. However, the only medical report submitted was Dr. Classen’s August 22, 1997 report. This report was previously of record and considered by the Office in its October 21, 1997 decision. The Board has held that material which is repetitious or duplicative of that already in the case record is of no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.⁴ For these reasons, the Board finds that the Office properly denied appellant’s request for reconsideration without conducting a merit review of the claim.

The August 17, 1998 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, D.C.
April 12, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

² 20 C.F.R. § 10.138(b)(1).

³ 20 C.F.R. § 10.138(b)(2).

⁴ See *Eugene F. Butler*, 36 ECAB 393, 398 (1984).