

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANDREW J. JOHNSON and U.S. POSTAL SERVICE,  
POST OFFICE, Jackson, MS

*Docket No. 99-1151; Submitted on the Record;  
Issued August 23, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI  
VALERIE D. EVANS-HARRELL

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

On May 6, 1997 appellant, then a 50-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that, on May 5, 1997, he injured his left arm while lifting and placing trays of flats in his vehicle. The employing establishment controverted the claim.

By decision dated July 23, 1997, the Office denied appellant's claim, finding that appellant had failed to establish "fact of injury." The Office found that, although appellant established that he experienced the claimed event, the medical evidence did not establish that a condition had been diagnosed in connection with this event, and that therefore an injury had not been established.

By letter dated August 17, 1997, appellant requested a review of the written record. By decision dated November 13, 1997, the hearing representative found that appellant had not established a relationship between his medical condition and the May 5, 1997 employment incident. Accordingly, she affirmed the Office's July 23, 1997 decision.

By letter dated November 10, 1998, appellant requested reconsideration of the prior decision. In support of the request for reconsideration, appellant submitted grievance summaries dated June 18 and July 3, 1997, a June 6, 1997 job offer and related documents, a May 8, 1997 disability certificate, a January 16, 1998 form terminating appellant's health benefits, a duty status report (Form CA-17) dated May 27, 1997 and a January 24, 1997 note indicating that appellant was to be placed on limited duty for two weeks.

In a decision dated December 4, 1998, the Office denied appellant's request for a merit review of the claim, finding that the evidence submitted was repetitious and irrelevant.

The Board has reviewed the evidence and finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for further review of the merits of his claim under 5 U.S.C. § 8128(a).

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease or increase the compensation awarded; or

(2) award compensation previously refused or discontinued."

Under 20 C.F.R. §10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office or by submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that, when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>1</sup>

As was properly noted by the Office, the June 6, 1997 job offer and the Form CA-17 are repetitious of evidence already in the file and considered under prior decisions. The remaining evidence does not constitute "relevant and pertinent" evidence. The issue in this case is a medical issue, *i.e.*, whether appellant established that a medical condition had been diagnosed in connection with appellant's work-related incident. Only two new medical reports were submitted, the May 8, 1997 disability certificate and the January 24, 1997 note that appellant was to be placed on limited duty and neither address either causal relationship or the nature of appellant's disability.

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<sup>1</sup> *Barbara A. Weber*, 47 ECAB 163 (1995); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

Accordingly, the Office of Workers' Compensation Programs decision dated December 4, 1998 is affirmed.<sup>2</sup>

Dated, Washington, D.C.  
August 23, 2000

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member

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<sup>2</sup> The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c), 501.3(d)(2). As appellant filed his appeal with the Board on February 19, 1999, the only decision before the Board is the December 4, 1998 decision.