

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANNY K. MAPLES and DEPARTMENT OF THE ARMY,
FACILITIES AND ENGINEERING DIVISION, Fort Chaffee, AR

*Docket No. 98-1424; Submitted on the Record;
Issued July 17, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office, in its February 27, 1998 decision, to reopen appellant's case for further consideration of the merits of his claim did not constitute an abuse of discretion.

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.¹ As appellant filed his appeal with the Board on March 27, 1998 the only decision properly before the Board is the Office's February 27, 1998 decision, denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's June 2, 1994 wage-earning capacity decision or the September 5 and April 10, 1996 or September 20, 1995 decisions denying modification of the June 2, 1994 decision.²

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 a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.³ Section 10.138(b)(2) provides that when an application for review of the merits of a

¹ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

² *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

³ 20 C.F.R. § 10.138(b)(1).

claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁴

On December 17, 1993 appellant, then a 45-year-old painter's helper, sustained a lumbar strain and aggravation of degenerative joint disease of the spine with a disc herniation in the performance of duty. By letter dated March 29, 1994, appellant was placed on the periodic compensation rolls to receive compensation benefits for temporary total disability. By decision dated June 2, 1994, the Office terminated appellant's compensation benefits on the grounds that his reemployment as a clerk with wages of \$388.00 per week effective March 31, 1994 fairly and reasonably represented his wage-earning capacity and his actual wages met or exceeded the wages of the job held when injured and, therefore, no loss of wages had occurred. By decisions dated September 20, 1995 and September 5 and April 10, 1996, the Office denied modification of its wage-earning capacity determination. By letter dated January 7, 1998, appellant requested reconsideration of the Office's wage-earning capacity determination. By decision dated February 27, 1998, the Office denied appellant's request for reconsideration.

In support of his January 7, 1998 request for reconsideration, appellant submitted evidence and argument previously considered by the Office. The submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁵

Appellant also argued that the Office had failed to consider the July 8 and August 5, 1997 reports of Dr. Peter J. Irwin, appellant's attending orthopedic specialist. However, these reports do not address the issue as to whether the Office properly terminated appellant's compensation benefits effective March 31, 1994 on the grounds that his reemployment as a clerk fairly and reasonably represented his wage-earning capacity. The Board has held that evidence that is not addressed to a particular issue involved in a claim does not constitute a basis for reopening a claim.⁶ Additionally, the record shows that the Office considered these reports in its October 31, 1997 decision regarding appellant's claim for a schedule award.

Appellant further argued that the position upon which the Office based its wage-earning capacity decision was a "make work" position created expressly for appellant and should not have been considered for a wage-earning capacity decision and that the Social Security Administration had found appellant permanently and totally disabled. These arguments were previously considered by the Office and are, therefore, insufficient to warrant further merit review of appellant's case.

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

⁶ *See John B. Montoya*, 43 ECAB 1148, 1152 (1992).

The February 27, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
July 17, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member