

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES MIDDLEBROOK, JR. and DEPARTMENT OF VETERANS
AFFAIRS, VETERANS HOSPITAL, Dayton, OH

*Docket No. 99-407; Submitted on the Record;
Issued June 6, 2000*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

This is the third appeal in this case.¹ In the first appeal, the Board, by an order dated December 22, 1994, granted a motion to remand the case filed by the Director of the Office.² In her motion, the Director requested that the Board remand the case to enable the Office to determine whether appellant's injury occurred on the employing establishment's premises "within a reasonable interval before working hours such that it was within the performance of duty." The Director noted that, if the Office found that the injury was sustained in the performance of duty, the Office would determine whether appellant had any resulting disability or medical condition that was related to his federal employment.

On the second appeal, the Board, by decision dated June 8, 1998, adopted the findings and conclusions as set forth by an Office hearing representative in his May 14, 1996 decision.³ The Board concluded that appellant fell in the area of the bus loop roadway and not on the steps leading to the employing establishment's premises; that, although the bus loop is federal property, it did not constitute part of the employing establishment's premises; and that, therefore, appellant's fall was an "off-premises injury which is not compensable as it arose out of 'ordinary nonemployment hazards of the journey itself which are shared by all travelers.'" The facts and

¹ On February 20, 1993 appellant, then a 42-year-old food service worker, filed a traumatic injury claim alleging that he sustained an injury to his right knee on February 14, 1993 when he slipped and fell at the bottom of cement stairs after alighting a Regional Transit Authority (RTA) bus at the bus loop.

² Docket No. 94-2007 (issued December 22, 1994).

³ Docket No. 96-2049 (issued June 8, 1998).

history of the case are set forth in the Office's May 14, 1996 decision, adopted by the Board, and are incorporated herein by reference.

By letter dated August 26, 1998, appellant, through his attorney, requested reconsideration of the Office's May 14, 1996 decision. In support of his request, appellant submitted photographs of the RTA bus loop stop area and the employing establishment's steps, as well as a narrative statement describing the February 14, 1993 incident. In his statement, appellant asserted that he sustained an injury to his right knee when he slipped and fell on the employing establishment's cement steps after alighting an RTA bus.

By letter dated September 24, 1998, the Office denied appellant's reconsideration request on the grounds that he did not submit new and relevant evidence, or advance new legal arguments.

The Board's jurisdiction to consider and decide appeals from final Office decisions extends only to those decisions issued within one year of October 23, 1998, the date on which this appeal was filed.⁴ Therefore, the Office's September 24, 1998 decision denying appellant's request for further merit review is the sole decision within the Board's jurisdiction.

As it is a matter of discretion on the part of the Office whether to reopen a case for further merit review under 5 U.S.C. § 8128, the function of the Board on this appeal is to determine whether the Office abused its discretion.

The Board finds that the Office did not abuse its discretion by denying appellant's request for further merit review of his claim.

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, advancing a new legal argument supporting his or her claim not previously considered by the Office, or submitting new and relevant evidence not previously considered by the Office.⁵ 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 requirements, the Office will deny the application for review without reviewing the merits of the claim.⁶ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁷ Evidence that does not address the particular issue involved also does not constitute reopening a case.⁸

⁴ 20 C.F.R. § 501.3(d)(2); *see also* *Donald J. Miletta*, 34 ECAB 1822 (1983); *Jeanette Butler*, 47 ECAB 128 (1995).

⁵ *Alton L. Vann*, 48 ECAB 259, 269 (1996).

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ *See Vann*, *supra* note 5 at 269; *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁸ *See Vann*, *supra* note 5 at 269; *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

Appellant's submission of his narrative statement and two photographs did not warrant a merit review of his case because the statement and photographs were repetitious. Although the statement and photographs were not previously submitted, the argument contained therein was previously considered by the Office. Specifically, the Office rejected appellant's argument that he slipped and fell on the employing establishment's steps in its May 24, 1994, March 23, 1995 and May 14, 1996 decisions. Therefore, appellant's request for further merit review of his claim did not meet the requirements set forth in the Office's regulations and did not warrant further merit review.

The decision of the Office of Workers' Compensation Programs dated September 24, 1998 is affirmed.

Dated, Washington, D.C.
June 6, 2000

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member