

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHEN R. MILBURN and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Covington, KY

*Docket No. 99-170; Submitted on the Record;
Issued March 21, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained a back injury in the performance of duty on October 29, 1997.

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the Office of Workers' Compensation Programs' hearing representative dated and finalized on May 4, 1998 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

Additionally, the Board finds that the Office properly exercised its discretion in denying appellant's July 21, 1998 request for a review of the written record. Since appellant received a review of the written record, he was not entitled, as a matter of right, to receive a second review of the written record on the same issue decided by the Office hearing representative.¹ Appellant instead was properly advised of his right to submit any new evidence to the Office along with a request for reconsideration.²

¹ See generally 5 U.S.C. § 8124(b).

² The record contains evidence submitted by appellant subsequent to the Office's May 4, 1998 decision. The Board does not have jurisdiction to review evidence that was not before the Office at the time it issued its final decision; see 20 C.F.R. § 501.2(c).

Accordingly, the decisions of the Office of Workers' Compensation Programs dated August 24 and May 4, 1998 are hereby affirmed.

Dated, Washington, D.C.
March 21, 2000

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member