

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUSTINE W. PERKINS and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 98-830; Submitted on the Record;
Issued May 9, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

On April 14, 1990 appellant, then a 31-letter carrier, filed a notice of occupational disease and claim for compensation alleging that she sustained a left foot condition as the result of prolonged walking in the performance of duty. She indicated that she first experienced left foot pain on March 20, 1990. On May 23, 1990 appellant began working partial days in a limited-duty capacity.

On July 29, 1990 the Office denied appellant's claim on the grounds that she failed to submit sufficient medical evidence to establish that her condition was causally related to factors of her employment. The Office, however, by its own motion vacated the denial and accepted the claim for tendinitis and tibial sesamoiditis of the left foot on February 13, 1991.

In a series of duty status reports dating from March 21, 1990 to April 20, 1993, Dr. Martin E. Kaufman, a Board-certified podiatrist and appellant's treating physician, reported that appellant remained partially disabled from work due to her left foot tendinitis condition. Dr. Kaufman prescribed cortisone injections and constructed orthotics, or shoe inserts, for appellant to wear to work. He indicated that appellant could not tolerate prolonged standing or walking.

Appellant received continuing compensation for wage loss and medical benefits.

On January 5, 1996 appellant accepted a job offer from the employing establishment for a position as a modified clerk. Dr. Kaufman signed off on the position as within appellant's medical restrictions.

Appellant also filed a Form CA-7 claim for a schedule award on January 5, 1996.

In support of her schedule award claim, appellant submitted a November 20, 1995 report from Dr. Kaufman, which requested authorization from the Office for appellant to receive another orthotic device. Dr. Kaufman did not address whether appellant had a permanent impairment to her left foot, nor did he provide an impairment rating.¹

The Office referred appellant for an examination with a Board-certified orthopedic surgeon. In a September 13, 1996 report, Dr. Russo noted appellant's history of injury and physical findings of normal sensation and circulation to the foot, normal gait, but with some tenderness over the medial sesamoid. Dr. Russo noted that appellant was diagnosed with tendinitis for which she was provided an orthotic to support and align her foot as well as a job accommodation to improve her condition and related symptoms. He concluded that appellant had no x-ray evidence for arthritis and that she had no permanent impairment according to the fourth edition of the A.M.A., *Guides*.

In a decision dated September 30, 1996, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence of record failed to show that appellant had any permanent physical impairment due to her work-related condition.

On September 24, 1997 appellant requested reconsideration.

In a decision dated October 8, 1997, the Office denied appellant's request for a merit review under 5 U.S.C. § 8128.

The Board finds that the Office properly denied appellant's request for reconsideration on the merits.

The only decision before the Board on this appeal is the Office's October 8, 1997 decision, denying appellant's request for a merit review of her case. Since more than one year elapsed between the date appellant filed her appeal on January 8, 1998 and the last merit decision dated September 30, 1996 the Board lacks jurisdiction to review that decision and the propriety of the Office's denial of appellant's schedule award.²

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.³ The regulations provide 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.⁴ When application for review of the merits of a claim does not meet at least one of these three requirements, the Office

¹ By letter dated May 28, 1996, the Office requested that Dr. Kaufman provide a permanent impairment rating under the fourth edition of the A.M.A., *Guides*, but the physician did not respond.

² 20 C.F.R. § 501.3(d) requires that an appeal must be filed within one year from the date of issuance of the final decision of the Office.

³ 5 U.S.C. § 8128; *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁴ 20 C.F.R. § 10.138(b)(1).

will deny the application for review without reviewing the merits of the claim.⁵ 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.⁶ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁷ Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.⁸

In the instant case, appellant did not advance a new legal argument nor show that the Office erred in denying her schedule award. Appellant also did not submit any new evidence in support of her reconsideration request. Because appellant did not comply with the requirements of the regulations relevant to section 8128, the Office properly determined that appellant's case did not warrant a merit review. The Board, therefore, finds that the Office properly denied appellant's request for reconsideration on the merits.

The decision of the Office of Workers' Compensation Programs dated October 8, 1997 is hereby affirmed.

Dated, Washington, D.C.
May 9, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁷ *Edward Matthew Diekemper*, 31 ECAB 224 (1979)

⁸ *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).