

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HENRY CABONE and U.S. POSTAL SERVICE,
POST OFFICE, Bakersfield, CA

*Docket No. 00-325; Submitted on the Record;
Issued November 15, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

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

The Board has duly reviewed the case record and finds that the Office's refusal to reopen appellant's case for further consideration of the merits of his claim did not constitute an abuse of discretion.

On May 4, 1996 appellant filed a traumatic injury claim alleging that on that day he sustained injury to his left thumb and wrist when he lifted a bunch of catalogs over his head. The Office accepted appellant's claim for left thumb strain and tendinitis and on February 10, 1998 granted appellant a schedule award based on a 24 percent loss of use of the left upper extremity, which amounted to 74.88 weeks of compensation. By letter dated January 21, 1999, appellant requested reconsideration of the February 10, 1998 decision. By decision dated September 29, 1999, the Office denied review of the prior decision.

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 Because more than one year has elapsed between the issuance of the Office's February 10, 1998 decision and October 12, 1999, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the February 10, 1998 decision and any preceding decisions. Therefore, the only decision before the Board is the Office's September 29, 1999 nonmerit decision denying appellant's application for a review of its February 10, 1998 decision.

To require the Office to reopen a case for merit review, section 10.606 provides that a claimant may obtain review of the merits of his or her claim by written request to the Office

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

identifying the decision and setting forth arguments or submitting evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.² When a claimant fails to meet at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.³

In support of the January 21, 1999 request for reconsideration, appellant submitted a November 20, 1998 duty status report, Form CA-17, indicating appellant's work restrictions and several W-2 wage and tax statements. Appellant also argued that he should be awarded a 100 percent schedule award because he was unable to work overtime and thereby earn more wages.

The duty status report and the wage and tax statements are irrelevant to the issue of whether appellant has more than a 24 percent permanent impairment of his left upper extremity for which he received a schedule award. Appellant's argument that he deserved a 100 percent schedule award because he is unable to work overtime and earn more wages is also irrelevant to the issue of whether appellant has more than a 24 percent permanent impairment of his left upper extremity.⁴

As appellant's January 21, 1999 request for reconsideration does not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying that request.

² 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

³ 20 C.F.R. § 10.608(a).

⁴ The Board has held that the submission of argument or evidence which does not address the particular issue involved does not constitute a basis for reopening a case. *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decision of the Office of Workers' Compensation Programs dated September 29, 1999 is hereby affirmed.

Dated, Washington, DC
November 15, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member