

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WALLACE CARTER and U.S. POSTAL SERVICE,
POST OFFICE, Omaha, NE

*Docket No. 00-517; Submitted on the Record;
Issued February 23, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs acted within its discretion in denying appellant's request for further merit review pursuant to 5 U.S.C. § 8128.

This is the second appeal in this case.¹ By decision and order dated June 12, 1997, the Board remanded the case for further development on the issue of whether appellant sustained a recurrence of disability on November 9, 1993 causally related to his August 11, 1991 employment injury. The facts of this case are set forth in the Board's June 12, 1997 decision and are herein incorporated by reference.

Subsequent to the remand of the case by the Board, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Stephen D. Torphy, a Board-certified surgeon specializing in vascular surgery, for an examination and evaluation as to whether appellant had any continuing disability or medical condition causally related to his August 11, 1991 employment injury. In reports dated February 12 and June 25, 1998, he opined that appellant had no residual disability or medical condition causally related to his August 11, 1991 employment injury.

By decision dated July 15, 1998, the Office denied appellant's claim for a recurrence of disability on or after November 9, 1993 causally related to his August 11, 1991 employment injury.

By letter dated July 13, 1999, appellant, through his attorney, requested reconsideration. He submitted no new evidence. Appellant asserted that the Office did not give sufficient weight to the reports of appellant's attending physicians, Drs. David Brown and Roy Holeyfield, in reaching its July 15, 1998 decision that he had no continuing disability or medical condition causally related to his August 11, 1991 employment injury.

¹ See Docket No. 95-2143 (issued June 12, 1997).

By decision dated October 19, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant further merit review.

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.² As appellant filed his appeal with the Board on November 16, 1999, the only decision before the Board is the Office's October 19, 1999 decision denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's July 15, 1998 merit decision denying appellant's claim for a recurrence of disability causally related to his August 11, 1991 employment injury.³

The Board finds that the Office acted within its discretion in denying appellant's request for further merit review.

The Code of Federal Regulations implementing 5 U.S.C. § 8128 provides that a claimant may obtain review of the merits of the claim if the application: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent evidence not previously considered by the Office.⁴ 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.⁵

In his request for reconsideration, appellant submitted no new evidence. He argued that the Office did not give sufficient weight to the reports of his attending physicians, Drs. Brown and Holeyfield in reaching its July 15, 1998 decision. This argument does not constitute relevant and pertinent evidence not previously considered by the Office as the record shows that the reports of appellant's physicians were previously considered by the Office in its earlier merit decisions denying appellant's claim for a recurrence of disability.

As appellant failed to show that the Office erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument not previously considered by the Office, and did not submit relevant and pertinent evidence not previously considered by the Office, the Office was within its discretion in denying appellant's request for reconsideration.

The decision of the Office of Workers' Compensation Programs dated October 19, 1999 is affirmed.

Dated, Washington, DC
February 23, 2001

² 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

³ *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

⁴ 20 C.F.R. § 10.606(b)(2) (1999).

⁵ 20 C.F.R. § 10.608(b) (1999).

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member