

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS L. FUQUAY and U.S. POSTAL SERVICE,
POST OFFICE, Charlotte, NC

*Docket No. 00-1146; Submitted on the Record;
Issued February 21, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

On February 5, 1997 appellant, then a 41-year-old letter carrier, filed a notice of traumatic injury and claim for compensation alleging that, while delivering the mail, he was charged by a large dog and fell injuring his left elbow. He underwent left elbow surgery on February 12, 1997 consisting of an open reduction internal fixation. The claim was accepted for a fractured left elbow and he received appropriate compensation. Appellant was off work from February 6 through 18, 1997.

On September 27, 1997 appellant filed a CA-7 claim for a schedule award.

In a decision dated November 4, 1997, the Office issued a schedule award for a four percent permanent impairment of the left upper extremity. The period of the award was from April 8 to July 4, 1997.

Appellant requested a hearing, which was held on August 11, 1998.

In a decision dated October 26, 1998, an Office hearing representative affirmed the Office's November 4, 1997 decision.

By letter dated August 15, 1999, appellant requested reconsideration and submitted a copy of a medical report from Dr. James R. Boatright, a Board-certified orthopedist, dated August 23, 1998. This report was originally submitted by him on September 8, 1998 and was considered by the Office hearing representative in his October 26, 1998 decision.

In an October 22, 1999 decision, the Office denied appellant's request for merit review.

The Board finds that the Office properly denied appellant's request for merit review under 5 U.S.C. § 8128.

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.¹ 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 specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.² When an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim. 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.³ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁴ 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.⁵

The Board finds that appellant failed to show that the Office erroneously applied or interpreted a point of law. He did not advance on reconsideration a relevant legal argument not previously considered by the Office; and he did not submit relevant and pertinent new evidence to warrant a merit review. The only evidence proffered by appellant on reconsideration had been previously considered by the Office hearing representative. Therefore, because appellant did not satisfy the requirement of the Office's regulations which would entitle him to a merit review, the Office properly denied his request for reconsideration.⁶

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

² 20 C.F.R. § 10.606(b) (1999).

³ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁴ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁵ *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

⁶ *See* 5 U.S.C. §§ 10.609(a) and 10.606(b).

The decision of the Office of Workers' Compensation Programs dated October 22, 1999 is hereby affirmed.

Dated, Washington, DC
February 21, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member