

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VINCENT WINN and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

*Docket No. 00-2276; Submitted on the Record;
Issued June 7, 2001*

DECISION and ORDER

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

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 July 17, 1998 appellant, then a 54-year-old electronic technician, filed a traumatic injury claim alleging that he hurt his right elbow and shoulders on November 25, 1997 while pulling a mail jam free on a machine. Appellant received medical treatment for left impingement syndrome beginning February 4, 1998.

In a decision dated September 23, 1998, the Office denied appellant's claim on the grounds that he failed to establish fact of injury.

In a June 16, 1999 decision, an Office hearing representative affirmed the Office's September 23, 1998 decision, finding that appellant submitted insufficient evidence to establish a causal relationship between the employment incident of November 25, 1997 and his alleged injury.

On March 20, 2000 appellant filed a request for reconsideration and submitted a deposition transcript of Dr. Kathleen McCarthy.

In a decision dated May 15, 2000, the Office denied appellant's request for reconsideration on the merits.

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

The Board's jurisdiction is limited to those decisions issued by the Office within one year of the date of appellant's appeal.¹ Because appellant filed his appeal with the Board on June 20,

¹ 20 C.F.R. § 501.2(c).

2000, the Board does not have jurisdiction to review the Office decisions dated June 16, 1999 and September 23, 1998. The only decision before the Board in this appeal is the Office's May 15, 2000 decision denying appellant's reconsideration request.

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.² 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.³

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.⁴ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁵ 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.⁶

In this case, appellant did not show on reconsideration that the Office erroneously applied or interpreted a specific point of law. He did not advance a relevant legal argument not previously considered by the Office. He also failed to submit relevant and pertinent new evidence. The deposition transcript of Dr. McCarthy did not address the issue presented in this case, which is whether appellant sustained a right elbow and bilateral shoulder injury on November 25, 1997.

Dr. McCarthy indicated that appellant suffers from depression due to certain employment factors, but she did not offer any opinion on a causal relationship between appellant's right elbow and bilateral shoulder conditions and the alleged employment incident on November 25, 1997. As such, Dr. McCarthy's deposition transcript does not constitute new and relevant evidence for the purposes of section 8128. Because appellant did not satisfy the requirements of section 8128, the Office properly refused to reopen his claim for a merit review.

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

³ 20 C.F.R. § 10.606(b) (1999).

⁴ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁵ *Edward Matthew Diekemper*, 31 ECAB 224 (1979)

⁶ *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

The decision of the Office of Workers' Compensation Programs dated May 15, 2000 is hereby affirmed.

Dated, Washington, DC
June 7, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member