

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY W. RAMSEY and U.S. POSTAL SERVICE,
POST OFFICE, Salisbury, NC

*Docket No. 99-1638; Submitted on the Record;
Issued March 16, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's November 3, 1998 request for reconsideration.

In a decision dated November 4, 1997, an Office hearing representative found that appellant had forfeited his entitlement to compensation from June 29, 1994 through March 29, 1996 because he knowingly withheld his emu-raising activities from the Office when he filed a claim for total disability compensation. The hearing representative found that appellant was operating a business whether he realized a profit or not.

On November 3, 1998 appellant requested reconsideration. He submitted a statement explaining, among many other things, that he did not consider raising emus to be self-employment, that he made no profit, that it was a hobby or investment and that it was his wife's business, not his. Appellant submitted statements from his wife and others, together with tax documents and copies of checks, photographs, an editorial and classified ads.

In a decision dated January 5, 1999, the Office denied appellant's November 3, 1998 request for reconsideration. The Office found that the evidence submitted in support of the request was cumulative and repetitive in nature and therefore insufficient to warrant review of its prior decision. The Office explained that appellant had provided no new information to show that he was not engaged in an agricultural operation or in operating a business. The Office found that other evidence, such as the copies of photographs and classified ads, was immaterial.

In a letter dated January 7, 1999, the Office corrected an error in its January 5, 1999 decision and advised appellant that the evidence of record still showed that he was operating an agricultural business raising birds.

The Board finds that the Office acted within its discretion in denying appellant's November 3, 1998 request for reconsideration.

Section 10.606(b) of the Code of Federal Regulations¹ provides that an application for reconsideration, including all supporting documents, must: (1) be submitted in writing and; (2) set forth arguments and contain evidence that either (i) shows that the Office erroneously applied or interpreted a specific point of law, (ii) advances a relevant legal argument not previously considered by the Office or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that where the request is timely but fails to meet at least one of the standards described in section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.²

The Board has conducted a limited review of the record, including the Office merit decision of November 4, 1997 and April 22, 1996 and transcript of the March 13, 1997 hearing before an Office hearing representative, for the purpose of determining whether appellant's November 3, 1998 request for reconsideration satisfies at least one of the standards described in section 10.606(b)(2). The Board finds that appellant's application fails to set forth arguments or to present evidence that shows that the Office erroneously applied or interpreted a specific point of law, that advances a relevant legal argument not previously considered by the Office or that constitutes relevant and pertinent new evidence not previously considered by the Office. The Office properly determined that the evidence submitted in support of appellant's request for reconsideration was cumulative, repetitious and immaterial. The Office therefore acted within its discretion to deny his request for review.

The January 5, 1999 decision of the Office of Workers' Compensation Programs, as corrected on January 7, 1999, is affirmed.

Dated, Washington, DC
March 16, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹ 20 C.F.R. § 10.606(b).

² *Id.* at section 10.608(b).