

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CALVIN A. WALTERS and U.S. POSTAL SERVICE,
POST OFFICE, Marrero, LA

*Docket No. 00-755; Submitted on the Record;
Issued May 11, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On October 20, 1976 appellant, then a 33-year-old letter carrier, filed a notice of occupational disease and claim for compensation, alleging that prolonged walking and standing in his job aggravated symptoms of pain in both knees. He further alleged that carrying a mailbag caused calcium deposits to develop in his right shoulder. Appellant stopped working on October 20, 1976.

In a decision dated September 5, 1978, the Office denied appellant's claim for compensation on the grounds that the evidence was insufficient to establish that appellant's diagnosed conditions of chondromalacia of the knees and tendinitis of the right shoulder were causally related to or aggravated by factors of his federal employment.

Appellant requested a review of the written record and on November 10, 1981 an Office hearing representative affirmed the Office's September 5, 1978 decision. Appellant also filed several requests for reconsideration that were denied.

Appellant appealed to the Board. On February 19, 1982 the Board issued an order which vacated the Office's November 10, 1981 decision and remanded the case for further medical development.¹

The Office subsequently issued a decision on October 25, 1982. The Office determined that appellant's right shoulder condition was not causally related to his employment, and that his chondromalacia of the patellae had only been temporarily aggravated by his employment until the day he ceased work.

¹ Docket No. 82-565 (issued February 19, 1982).

Appellant requested a hearing, which was held on September 20, 1983. An Office hearing representative affirmed the Office's denial of compensation on April 10, 1984.

The April 10, 1984 decision was appealed to the Board and affirmed by decision on February 1, 1985.²

In an April 18, 1986 letter, appellant requested reconsideration, claiming that his condition had deteriorated.

In a decision dated May 21, 1986, the Office denied appellant's reconsideration request, finding the evidence submitted on reconsideration to be irrelevant and therefore insufficient to warrant a merit review.

In a May 29, 1987 decision, the Board affirmed the Office's May 21, 1986 decision.³

There was no further action with regard to appellant's claim until November 8, 1999 when appellant filed a letter requesting that his claim be reopened for reconsideration. Appellant submitted a report from Dr. Robert A. Fleming dated October 14, 1997. He also submitted a copy of the Board's decision and a copy of a letter addressed from appellant to Dr. Fleming.

In a decision dated February 16, 1999, the Office denied appellant's reconsideration request as untimely filed. The Office reviewed the evidence submitted on reconsideration and determined that it was insufficient to establish clear evidence of error.

Appellant appealed the Office's February 16, 1999 decision to the Board. At the request of the Office, the February 16, 1999 decision was set aside and the case was remanded for further consideration.⁴ The Board's September 23, 1999 order noted that appellant had not received proper notification of the time limitation for requesting reconsideration.⁵

On remand, the Office issued a decision on November 8, 1999 denying appellant's request for reconsideration under 5 U.S.C. § 8128 on the grounds that the evidence submitted by appellant was insufficient to warrant a merit review.

The Board finds that the Office properly denied appellant's request for reconsideration on the merits 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

² Docket No. 85-121 (issued February 1, 1985).

³ Docket No. 87-448 (issued May 29, 1987).

⁴ The Office noted that appellant had not been properly notified of the one-year time limitation for requesting reconsideration until the Office's February 16, 1999 decision; therefore, appellant was entitled to have his claim reviewed as though the request for reconsideration had been timely filed.

⁵ Docket No. 99-1291 (issued September 23, 1999).

compensation.⁶ 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.⁷ 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.⁸ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁹ 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.¹⁰

The Board finds that appellant failed to show that the Office erroneously applied or interpreted a point of law. Appellant 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 new evidence proffered by appellant on reconsideration is a report dated October 14, 1997 by Dr. Fleming, which concludes that appellant's bilateral patellafemoral arthritis is a permanent condition that was causally related to working as a letter carrier. Dr. Fleming's report, however, is not relevant since the issue of the case was whether appellant's aggravation of chondromalacia continued after his employment ended, and whether appellant's tendinitis of the right shoulder was causally related to factors of his federal employment. Moreover, the physician reiterates an opinion that has been previously considered by the Office. Because appellant did not satisfy the requirements of section 8128 of the Act, the Office properly denied his request for reconsideration on the merits.

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

⁷ 20 C.F.R. § 10.606(b) (1999).

⁸ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁹ *Edward Matthew Diekemper*, 31 ECAB 224 (1979)

¹⁰ *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

The decision of the Office of Workers' Compensation Programs dated November 8, 1999 is hereby affirmed.

Dated, Washington, DC
May 11, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member