

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND MENDOZA and DEPARTMENT OF THE AIR FORCE,
AIR DEFENSE COMMAND, KELLY AIR FORCE BASE, TX

*Docket No. 00-883; Submitted on the Record;
Issued May 8, 2001*

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective February 28, 1999 due to his refusal of an offer of suitable work; and (2) whether the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

With respect to the first issue, the Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office dated and finalized July 1, 1999 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.¹

The Board further finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and

¹ By decision dated and finalized July 1, 1999, an Office hearing representative affirmed a February 19, 1999 Office decision on the grounds that the Office properly terminated appellant's compensation effective February 28, 1999 due to his refusal of an offer of suitable work. By decision dated September 29, 1999, the Office denied appellant's request for merit review.

² 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

pertinent new evidence not previously considered by the Office.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file his application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁵

In connection with his July 1, 1999 reconsideration request, appellant argued that he made an effort to accept the position offered by the employing establishment within the time allotted but that he was unable to do so. However, the submission of this argument is not sufficient to reopen appellant's claim in that the Office has previously considered and rejected the argument. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁶ Appellant submitted several documents in support of his reconsideration request but these documents do not relate to the main issue of the present case in that they do not address appellant's ability to perform the materials handler position around the time it was offered in early 1999.⁷ The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁸

In the present case, appellant has not established that the Office abused its discretion in its September 29, 1999 decision, by denying his request for a review on the merits of its July 1, 1999 decision, under section 8128(a) of the Act, because he did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office.

³ 20 C.F.R. §§ 10.606(b)(2).

⁴ 20 C.F.R. § 10.607(a).

⁵ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

⁷ Appellant submitted an August 30, 1999 report of Dr. Richard Hernandez, an attending Board-certified family practitioner, but the report does not concern appellant's medical condition around the time the position was offered.

⁸ *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

The September 29, July 1 and February 19, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 8, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member