

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CARL J. JARMON and U.S. POSTAL SERVICE,  
POST OFFICE, Cincinnati, OH

*Docket No. 01-782; Submitted on the Record;  
Issued November 2, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further consideration of the merits on the basis that his request was untimely and failed to present clear evidence of error.

The Board has duly reviewed the case record and finds that the Office properly denied appellant's request for reconsideration.

On September 6, 1998 appellant, then a 60-year-old mailhandler/dock technician, filed an occupational disease claim alleging that his hip condition was causally related to his March 22, 1994 work-related injury.

By letter dated October 2, 1998, the Office advised appellant regarding what kind of evidence he needed to submit to process his claim. On October 5, 1998 the Office doubled appellant claims under A9-388562.<sup>1</sup>

In a decision dated December 1, 1998, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that appellant sustained an occupational disease as a result of his March 22, 1994 work-related injury.

In a letter received by the Office on April 30, 1999, appellant requested an oral hearing "about my claim from March 22, 1994." On September 14, 1999 the Office denied appellant's request for an oral hearing on the grounds that his request was untimely.

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<sup>1</sup> The Office accepted a claim for traumatic injury finding that, on March 22, 1994, the same date appellant alleged that he sustained an occupational disease in the current case, he sustained multiple contusions. However, the Office denied appellant's subsequent claim for recurrence of disability in a decision dated September 30, 1994. Appellant appealed that decision and the Board, in a decision dated December 22, 1997, upheld the Office's denial. Docket No. 96-574.

By letter received by the Office on October 5, 2000, appellant requested reconsideration.

By decision dated October 18, 2000, the Office denied appellant's request for review on the grounds that it was untimely filed and that appellant failed to provide clear evidence of error.

The only decision before the Board in this appeal is the Office's decision dated October 18, 2000 denying appellant's application for review.<sup>2</sup> As more than one year has elapsed between the date of the Office's most recent merit decision, issued on December 1, 1998, and the date of appellant's appeal, January 24, 2001, the Board lacks jurisdiction to review the merits of appellant's claim.<sup>3</sup>

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>4</sup> the Office's regulations provide that an application for reconsideration must set forth arguments that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>5</sup> 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.<sup>6</sup> To be entitled to merit review of an Office decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.<sup>7</sup>

In this case, appellant's letter received on October 5, 2000 notes that his injury will not go away without providing any new evidence relevant to this allegation. Because the record does not contain any evidence to shift the weight of the evidence in favor of the claimant or raise a substantial question as to the correctness of the Office decision, the Board finds that the Office properly denied the request for reconsideration in this case.<sup>8</sup>

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<sup>2</sup> The Office referred to the Board's December 22, 1997 decision as its last merit decision in appellant's initial traumatic injury claim. The Office's last merit decision in appellant's traumatic injury claim was dated November 27, 1995.

<sup>3</sup> 20 C.F.R. § 501.3(d).

<sup>4</sup> 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 his own motion or on application." 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.606(b).

<sup>6</sup> *Carol Cherry*, 47 ECAB 658 (1996).

<sup>7</sup> 20 C.F.R. § 10.607(a).

<sup>8</sup> The record contains an August 31, 1999 report from Dr. Lawrence A. Zeff who noted appellant's pain on flexion and extension of the lumbar spine. However, he did not relate appellant's condition to his employment.

The decision of the Office of Workers' Compensation Programs dated October 18, 2000 is affirmed.<sup>9</sup>

Dated, Washington, DC  
November 2, 2001

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> The Board notes that this case record contains evidence which was submitted subsequent to the Office's October 18, 2000 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n. 2 (1952).