

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT J. MARSH and DEPARTMENT OF THE ARMY,
DISCIPLINARY BARRACKS, FORT LEAVENWORTH, KS

*Docket No. 01-576; Submitted on the Record;
Issued October 1, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the refusal of the Office of Workers' Compensation Programs 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.

This is appellant's third appeal before the Board. In the first instance, the Board dismissed appellant's appeal at his own request.¹ In the second instance, the Board dismissed appellant's appeal on the Director's motion which argued that the Board had no jurisdiction over the case.² This third appeal then followed.³

The Board has duly reviewed the case record in the present appeal and 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.

The only decision before the Board on this appeal is the Office's August 2, 2000 nonmerit decision denying appellant's application for a reconsideration of its February 9, 1978 decision. Because more than one year has elapsed between the issuance of the Office's February 9, 1978 merit decisions and December 13, 2000, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the February 9, 1978 decision.⁴

The Federal Register dated November 25, 1998 advised that, effective January 4, 1999, certain changes to 20 C.F.R. Parts 1 to 399 would be implemented. The revised Office

¹ Docket No. 98-2197, issued October 26, 1998.

² Docket No. 99-2228, issued June 27, 2000.

³ A fourth appeal docketed as No. 2001-0610 was dismissed on January 30, 2001 as being a duplicate.

⁴ See 20 C.F.R. § 501.3(d)(2).

procedures pertaining to the requirements for obtaining a review of a case on its merits under 5 U.S.C. § 8128(a), state as follows:

“(b) The application for reconsideration, including all supporting documents, must: (1) be submitted in writing; (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].”⁵

To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁶ The Board has found that the imposition of the one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under section 8128(a) of the Act.⁷ When a claimant fails to meet one of the above-mentioned 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.⁸

In support of his reconsideration request appellant argued that the Office denied his claim on the basis of “inadequate and erroneous information.” However, no specific allegations were made, no factual or medical evidence was presented, and no specific error was identified. The Board now independently makes the determination that his argument does not constitute identification of an erroneously applied or interpreted specific point of law, relevant or pertinent new medical evidence not previously considered by the Office supporting appellant’s contentions, or relevant legal argument not previously considered by the Office. Consequently, the evidence submitted in support of appellant’s request for reconsideration of the February 9, 1978 Office merit decisions does not constitute a basis for reopening a claim for further merit review. Therefore, the Office properly denied appellant’s application for reopening his case for a review on its merits.

In the present case, appellant has not established that the Office abused its discretion by denying his request for review of its February 9, 1978 decisions.

⁵ 20 C.F.R. § 10.606 (b)(1)-(2).

⁶ 20 C.F.R. § 10.607(a). However, in this case the time for filing a request for reconsideration of prior Office decisions began to run with the issuance of the Board’s August 12, 1998 merit decision.

⁷ *Diane Matchem*, 48 ECAB 532 (1997); *Jeanette Butler*, 47 ECAB 128 (1995); *Mohamed Yunis*, 46 ECAB 827 (1995); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁸ *See Mohamed Yunis*, *supra* note 7; *Elizabeth Pinero*, 46 ECAB 123 (1994); *Joseph W. Baxter*, 36 ECAB 228 (1984).

Accordingly, the decision of the Office of Workers' Compensation Programs dated August 2, 2000 is hereby affirmed.

Dated, Washington, DC
October 1, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member