

“U. S. DEPARTMENT OF LABOR

Employees’ Compensation Appeals Board

In the Matter of VERNON M. ARTIS and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 02-846; Submitted on the Record;
Issued August 28, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
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 May 3, 1993 appellant, then a 36-year-old letter sorting machine clerk, filed a claim for an injury occurring on May 2, 1993 in the performance of duty. The Office accepted appellant’s claim for cervical strain and cervical radiculopathy. He returned to limited-duty employment for four hours a day on October 29, 1994.

By decision dated June 8, 1998, the Office reduced appellant’s compensation effective May 3, 1993 based on its finding that appellant’s actual earnings as a distribution clerk for six hours a day fairly and reasonably represented his wage-earning capacity. In a decision dated August 20, 1999, a hearing representative affirmed the Office’s June 8, 1998 wage-earning capacity decision.

On April 20, 2000 appellant filed a notice of recurrence of disability alleging that on April 13, 2000 he sustained a recurrence of disability causally related to his May 2, 1993 employment injury. On the claim form, appellant stated that cold air from blowers “aggravated my present condition and made it become worse.” He stopped work on April 14, 2000 and returned to work on April 19, 2000.

By decision dated June 30, 2000, the Office denied appellant’s claim on the grounds that the evidence failed to establish that he sustained a recurrence of disability. In a letter dated July 13, 2000, he requested a review of the written record by an Office hearing representative. By decision dated December 29, 2000 and finalized January 2, 2001, the hearing representative affirmed the Office’s June 30, 2000 decision.

By letter dated June 8, 2001, appellant requested reconsideration of his claim. In a decision dated October 22, 2001, the Office found that the evidence submitted in support of the request for reconsideration was insufficient to warrant review of the prior decision.¹

The Board finds that the Office properly denied appellant's request for reconsideration under section 8128.

The only decision over which the Board has jurisdiction is the Office's October 22, 2001 decision denying appellant's request for a review of the merits of the case. Because more than one year has elapsed between the issuance of the Office's decision finalized January 2, 2001 and February 21, 2002, the date appellant filed his appeal before the Board, the Board lacks jurisdiction to review the decision finalized January 2, 2001.²

Section 10.606 of the Code of Federal Regulations provides 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].³

Section 10.608 provides that 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.⁴

In support of his request for reconsideration, appellant submitted a report by Dr. Jennifer Chu indicating that she had treated him with an electrical intramuscular stimulation on February 19, 1999. This evidence, however, is not relevant to the issue at hand, which is whether appellant was unable to perform his limited-duty employment from April 14 to 19, 2000 because either the duties of the position changed or the medical evidence established that he was disabled due to his employment injury. As discussed above, evidence, which does not address the particular issue involved, does not constitute a basis for reopening a case.⁵

¹ In the decision, the Office states that it conducted a merit review and found that the evidence was insufficient to warrant modification of the prior decision. The Office claims examiner, however, in the accompanying memorandum to the Director, specifically performs a nonmerit review of the evidence and finds that it is “irrelevant, cumulative, immaterial and insufficient to warrant a full merit review of the case.”

² See 20 C.F.R. §§ 501.2(c); 501.3(d).

³ 20 C.F.R. § 10.606(b)(2).

⁴ 20 C.F.R. § 10.608(b).

⁵ See *Dominic E. Coppo*, 44 ECAB 484 (1993).

As abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from known facts.⁶ Appellant has made no such showing here and thus, the Board finds that the Office properly denied his application for reconsideration of his claim.

The decision of the Office of Workers' Compensation Programs dated October 22, 2001 is affirmed.

Dated, Washington, DC
August 28, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *Rebel L. Cantrell*, 44 ECAB 660 (1993).