

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of LAWRENCE E. GRAY, JR. and DEPARTMENT OF THE ARMY,  
CORPS OF ENGINEERS, St. Louis, MO

*Docket No. 01-1280; Submitted on the Record;  
Issued January 24, 2002*

---

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
PRISCILLA ANNE SCHWAB

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

This case is before the Board for the second time. Previously, the Board found that appellant failed to establish that his back condition was causally related to his federal employment.<sup>1</sup> The law and the facts as set forth in the previous Board decision are incorporated herein by reference.

Subsequently, appellant expressed his disagreement with the previous decisions and submitted a letter from the Office dated March 21, 1995 in which the Office accepted that on November 19, 1994 appellant sustained an employment-related back strain.<sup>2</sup> By decision dated September 21, 2000, the Office denied appellant's reconsideration request, finding that appellant failed to submit new, relevant evidence.<sup>3</sup>

The Board finds that the Office acted within its discretion in denying appellant's request for review.

---

<sup>1</sup> Docket No. 99-135 (issued April 7, 2000).

<sup>2</sup> The November 19, 1994 employment injury was adjudicated by the Office under file number 11-0138375. The instant claim, in which appellant filed an occupational disease claim for a back condition, was adjudicated by the Office under file number 11-0162214.

<sup>3</sup> In his November 12, 2000 letter to the Board, appellant requested "reconsideration" of his claim. To the extent that this letter could be considered a petition for reconsideration of the April 7, 2000 Board decision, the Board finds that it was untimely filed. Section 501.7(a) of the Board's regulations provides that a petition for reconsideration with the Board must be filed within 30 days from the date of the Board decision. 20 C.F.R. § 501.7(a).

The only decision before the Board in this appeal is the September 21, 2000 decision in which the Office denied appellant's application for review.

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>4</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (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.<sup>5</sup> Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>6</sup>

In this case, with his request for reconsideration, appellant merely submitted an acceptance letter for a previous claim. Appellant also argued that the previous claim contained medical evidence regarding his back condition.<sup>7</sup> The Board finds this evidence and argument insufficient to warrant merit review inasmuch as the evidence needed to establish appellant's claim is rationalized medical evidence indicating that his back condition is causally related to factors of his federal employment. The Office, therefore, properly denied appellant's request for reconsideration.

---

<sup>4</sup> 20 C.F.R. § 10.608(a) (1999).

<sup>5</sup> 20 C.F.R. § 10.608(b)(1) and (2) (1999).

<sup>6</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>7</sup> As discussed in the previous Board decision, the only medical evidence of record is a report dated February 4, 1998 from Dr. James F. Loomis, a Board-certified internist, who did not provide an opinion regarding the cause of appellant's back condition.

The decision of the Office of Workers' Compensation Programs dated September 21, 2000 is hereby affirmed.

Dated, Washington, DC  
January 24, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Priscilla Anne Schwab  
Alternate Member