

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT L. MCKINNEY and U.S. POSTAL SERVICE,  
POST OFFICE, Corpus Christi, TX

*Docket No. 01-2175; Submitted on the Record;  
Issued July 25, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

The Board has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further consideration of the merits of his claim.

The only decision before the Board on this appeal is the Office's March 19, 2001 decision denying appellant's application for a review on the merits of its February 22, 2000 decision.<sup>1</sup> Because more than one year has elapsed between the issuance of the Office's February 22, 2000 merit decision and September 18, 2001, the date the Board received appellant's appeal, the Board lacks jurisdiction to review the February 22, 2000 merit decision.<sup>2</sup>

Under section 8128(a) of the Federal Employees' Compensation Act,<sup>3</sup> the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,<sup>4</sup> which provides that a claimant may obtain a review of the merits if her written

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<sup>1</sup> By decision dated February 22, 2000, the Office denied modification of its earlier decision of October 14, 1999 which denied appellant's claim for a right shoulder injury on the basis that fact of injury was not established.

<sup>2</sup> See 20 C.F.R. § 501.3(d)(2). Appellant's letter dated June 11, 2001 requesting an appeal was received by the Office on August 20, 2001 and received by the Board on September 18, 2001. The Board notes that even if appellant's letter was postmarked June 11, 2001, the Board would not have jurisdiction over the Office's February 22, 2000 merit decision since more than one year has elapsed. *Id.*

<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606(b) (1999).

application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(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].”

Section 10.608(b) of the Act provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>5</sup> If a claimant fails to submit relevant evidence not previously of record or advance legal contentions or facts not previously considered, the Office will deny the application for reconsideration without reopening the case for review.<sup>6</sup> The submission of evidence, which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>7</sup>

In the present case, the Office denied appellant’s claim for a right shoulder injury of July 21, 1999 for the reason that fact of injury was not established. With his reconsideration request of February 13, 2001, appellant submitted a February 19, 2001 medical report from Dr. Bliss W. Clark, a Board-certified orthopedic surgeon. Although Dr. Clark indicated that appellant had recovered sufficiently from his shoulder surgery and could now do light-duty work with restrictions, the report fails to address how appellant’s surgery arose or offer a medical opinion for the cause of appellant’s condition. The Board finds that this evidence is insufficient to require reopening of appellant’s case for further review of the merits of his claim as it fails to address the issue in this case.

In support of his reconsideration request, appellant argued that the Office denied his claim on the basis of inadequate and erroneous information. He alleged that Diana Acosta of the Corpus Christi Workers’ Compensation Office supplied incorrect information regarding his case as he had never filed a CA-2a form in this case. He stated that although he had told Ms. Acosta that he had the same severe pain in his shoulder as he had had in 1994 when his truck rolled over, he specifically stated that he hurt his shoulder on July 21, 1999 by lifting a package behind his truck seat. However, there is no showing that Ms. Acosta of the Corpus Christi Workers’ Compensation Office supplied erroneous information to appellant or that appellant’s claim was not processed properly based on the information of record.

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

<sup>6</sup> *Id.*; *John E. Watson*, 44 ECAB 612, 614 (1993).

<sup>7</sup> *Jerome Ginsberg*, 32 ECAB 31 (1980).

Appellant indicated that the Office decision dated February 22, 2000 which stated that he had sought medical treatment due to a scuffle with his son-in-law was a lie. He stated that he had injured his shoulder on July 21, 1999, was on sick leave and then aggravated the condition when he pulled his son-in-law away from his pregnant daughter. Absent any documentation supporting these allegations, appellant's allegations can not be accepted as factual. The Board notes that the Office specifically found that the extent of injury caused by the intervening incident with appellant's son-in-law could not be determined as appellant did not seek medical treatment or file the new injury claim until well after both incidents had occurred.

Appellant contended that the Office erred in relying upon Dr. Ray Smith's report. He related that he felt Dr. Smith was negligent in the care of his father and, thus, he did not have any faith in Dr. Smith's professional opinion. Appellant stated that Dr. Smith was no longer his doctor and that Dr. Smith was hostile towards him and would not return his telephone calls regarding the problem with his shoulder. The Form CA-16 submitted by Dr. Smith indicated that appellant's right shoulder pain developed as a result of a scuffle with his drunk son-in-law and the reported condition was not caused or aggravated by the employment activity appellant described. The Office specifically found that the medical evidence of record did not establish that the reported incident either caused an injury or aggravated a preexisting condition. The Office further found that there were inconsistencies in the factual evidence which did not support that the claimed incident of July 21, 1999 occurred at the time, place and in the manner alleged by appellant. As previously noted, the February 19, 2001 medical report from Dr. Clark which appellant submitted on reconsideration fails to address the relevant issue in this case. Accordingly, appellant's opinion regarding Dr. Smith's medical assessment has no bearing on his workers' compensation claim.

Appellant's feelings that the employing establishment is against him is insufficient to require reopening of appellant's case for further review of the merits of his claim as it fails to address the issue in this case.

Consequently, the evidence submitted in support of appellant's request for reconsideration of the February 22, 2000 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.

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 19, 2001 is hereby affirmed.

Dated, Washington, DC  
July 25, 2002

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member