

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS G. MERRILL and U.S. POSTAL SERVICE,
POST OFFICE, Syracuse, NY

*Docket No. 02-75; Submitted on the Record;
Issued June 10, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant is entitled to a schedule award pursuant to section 8107; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for further review on the merits under 5 U.S.C. § 8128(a).

This case was before the Board on a prior occasion.¹ Appellant, a 40-year-old mail processor, filed an occupational disease claim on December 15, 1989, alleging that he developed pain in his right shoulder causally related to factors of his employment. The Office accepted the claim for cervical strain and right acromioclavicular joint strain. Appellant returned to limited duty on January 25, 1991 with restrictions due to his accepted employment injury. He intermittently missed work for various periods, for which he received appropriate wage-loss compensation until December 6, 1991, when he stopped working. He received compensation for temporary total disability.

By letter dated October 19, 1994, the employing establishment offered appellant a limited-duty job as a mail processor based on the restrictions outlined by Dr. Abdul Razaq, a referee medical examiner and Board-certified orthopedic surgeon. By decision dated April 20, 1995, the Office found that appellant was not entitled to compensation for wage loss claimed after March 22, 1995 on the grounds that he had refused to accept a suitable job offer pursuant to 5 U.S.C. § 8106(c)(2). The Office denied reconsideration in decisions dated July 20, 1995 and June 3, 1996. On October 6, 1997 appellant filed a Form CA-7 claim for an award under the schedule.

In a decision and order dated September 16, 1999, the Board affirmed the Office's June 3, 1996 decision, finding the Office properly terminated appellant's compensation effective March 22, 1995 on the grounds that he refused an offer of suitable work.

¹ Docket No. 97-24 (issued September 16, 1999).

By decision dated June 1, 2000, the Office denied appellant's claim for an award under the schedule, finding that the termination of appellant's compensation under 5 U.S.C. § 8106(c) served as a penalty provision which precluded further compensation under section 8107. By letter dated July 26, 2000, appellant requested a review of the written record.

By decision dated August 7, 2001, an Office hearing representative affirmed the Office's June 1, 2000 decision.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the August 7, 2001 decision of the hearing representative of the Office is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative. The decision of the Office dated August 7, 2001 is affirmed.²

By letter dated August 11, 2001, appellant requested reconsideration of the hearing representative's August 7, 2001 decision. He did not submit any new medical evidence with this request.

By decision dated September 18, 2001, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.607, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.³ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁴

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and his requests did not contain any new and relevant medical evidence for the Office to review. Additionally, appellant's August 11, 2001 letter failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Appellant contended that he did not have time to review the job offer and confer with his physicians and that the job offer did not conform with his physical limitations. He failed to submit new and relevant evidence in support of his contentions. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's

² See *Stephen R. Lubin*, 43 ECAB 564 (1992).

³ 20 C.F.R. § 10.607(b)(1). See generally 5 U.S.C. § 8128(a).

⁴ *Howard A. Williams*, 45 ECAB 853 (1994).

claim for a review on the merits. The Board therefore affirms the Office's September 18, 2001 decision.

The decisions of the Office of Workers' Compensation Programs dated September 18 and August 7, 2001 are hereby affirmed.

Dated, Washington, DC
June 10, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member