

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARRELL E. BATTLES and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

*Docket No. 01-755; Submitted on the Record;
Issued March 13, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for further review of his case on its merits under 5 U.S.C. § 8128(a).

This is appellant's second appeal before the Board. In the prior appeal, the Board affirmed the Office's July 31, 1996 decision denying appellant's claim on the grounds that he failed to establish fact of injury. The facts and circumstances of the case are fully detailed in the prior decision and are hereby adopted by reference.¹

After return of the case record to the Office, by letter dated April 20, 2000, appellant requested additional time for further medical evaluation of his toe. In support of his request, appellant submitted a November 22, 1999 letter from the Executive Director of the Office of Adjudicatory Services to appellant's congressional representative regarding the status of his case an April 20, 2000 letter to the Office from appellant's congressional representative's assistant about filing a request for reconsideration and a May 2, 2000 response from the Office accepting the April 20, 2000 letter as a request for reconsideration.

By decision dated June 27, 2000, the Office refused appellant's request to reopen his case for further review on its merits. The Office found that the letters submitted contained no medical opinion evidence that would support appellant's claim of right foot injury on February 22, 1994. The Office, therefore, found that this evidence was irrelevant to the issue of the case and consequently did not constitute a basis for reopening the case for further merit review.

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.

¹ Docket No. 97-2323 (issued April 20, 1999).

The only decision before the Board on this appeal is the Office's June 27, 2000 nonmerit decision denying appellant's application for a reconsideration. Because more than one year has elapsed between the issuance of the last merit decision dated April 20, 1999 and January 5, 2001, the postmark date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the merits of the claim.²

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 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.³ 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.⁴ 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 Federal Employees' Compensation Act.⁵ 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.”⁶

In support of his reconsideration request, appellant argued that he be granted additional time for further medical examination and that the Office should appoint an Office medical adviser to evaluate his toe. The other two letters appellant submitted had no probative value on the issue of fact of injury as Mr. Kravetz's letter merely reported the status of appellant's case and the Congressional Staff Assistant only reported appellant's schedule for medical examination. However, no specific allegations were made, no factual or medical evidence was presented and no specific error was identified. Appellant's 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 does not constitute a

² See 20 C.F.R. § 501.3(d)(2).

³ 20 C.F.R. § 10.606 (b)(1) (2).

⁴ 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 April 20, 1999 merit decision.

⁵ *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).

⁶ See *Mohamed Yunis*, *supra* note 5; *Elizabeth Pinero*, 46 ECAB 123 (1994); *Joseph W. Baxter*, 36 ECAB 228 (1984).

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 June 27, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 13, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member