

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARTURO ISSA and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

*Docket No. 01-679; Submitted on the Record;
Issued May 13, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration dated October 26, 2000 under 5 U.S.C. § 8128(a).

The Office accepted that appellant sustained an acute back strain and elbow bruise while in the performance of duty on December 12, 1986.

On July 13, 1988 appellant filed a claim for recurrence of disability.

In an attending physician's report dated July 19, 1988, Dr. Robert N. Mitgang, appellant's treating physician and Board-certified in neurosurgery, stated that he had examined appellant that day and noted a degenerative disc disease and lumbar radiculopathy due to disc herniation. Dr. Mitgang placed appellant on total disability leave from July 8 to 17, 1988.

On December 20, 1988 appellant filed a second claim for recurrence of disability alleging that the recurrence occurred on November 15, 1988.

In a report dated September 22, 1995, Dr. Mitgang noted that he had examined appellant that day after a four-year hiatus, and related appellant's symptoms of back pain and recurring radiating left buttock and leg pain. He stated that appellant should be allowed to move around with changes of position frequently during work or training.

In a report dated December 15, 1995, Dr. Mitgang stated that appellant's underlying problem "is the old disc protrusion associated with lumbar spondylosis, currently possibly aggravated by prolonged sitting or an inability to move about frequently during job retraining."

On June 29, 1998 appellant filed a third recurrence of disability claim, noting that the recurrence occurred on August 25, 1995.

In a report dated August 19, 1998, the employing establishment stated that appellant had resigned effective September 21, 1994.

By decision dated November 10, 1998, the Office denied appellant's claim for a recurrence of disability alleged to have occurred on August 25, 1995.

On November 30, 1998 appellant requested an oral hearing.

On August 20, 1999 a hearing was held in San Francisco and appellant testified that he was receiving compensation benefits based on his prior accepted stress claim. It is noted that the hearing representative stated that appellant filed a claim for recurrence of disability on January 29, 1998 alleging that his September 22, 1998 condition was related to his work-related injury of December 19, 1986.¹

In a decision dated and issued on November 4, 1999, the hearing representative denied appellant's claim for a recurrence of disability on or about August 25, 1995 which appellant alleged was causally related to his December 19, 1986 work-related injury.

By letter dated October 17, 2000 and received by the Office on October 26, 2000, appellant requested reconsideration.

By decision dated November 15, 2000, the Office denied appellant's request for reconsideration.

The Board finds that the Office properly denied appellant's October 26, 2000 request for reconsideration.

The only decision before the Board on this appeal is the Office's November 15, 2000 decision denying appellant's request for merit review of the November 4, 1999 decision of the hearing representative. Because more than a year has elapsed between the issuance of the Office's last merit decision on November 4, 1999, and January 3, 2001, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the prior merit decision.²

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.⁴ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without

¹ In a letter dated September 10, 1999, appellant stated that his date of injury was January 14, 1988.

² 20 C.F.R. § 501.3(d)(2); *Martha A. McConnell*, 50 ECAB 128 (1998).

³ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

⁴ *Id.* at § 10.607(a).

reopening the case for review on the merits.⁵ The Board has found that the imposition of this one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).⁶

In this case, appellant supported his request for reconsideration with a request that the Office provide a fair reading of the prior evidence and an argument that his condition was both an industrial injury and a recurrence of disability based on his December 19, 1986 work-related injury. His request that the Office provide a fair reading of the evidence fails to establish that the Office erroneously applied or interpreted a point of law in its prior decision. Further, appellant's request failed to constitute a relevant legal argument that the Office had not yet considered, nor was it relevant and pertinent new evidence not previously considered by the Office. His arguments that his condition was both an industrial injury and a recurrence of disability were considered by the Office previously.

Because appellant has failed to show that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by the Office, or submitted any new relevant and pertinent evidence not reviewed previously by the Office, the Office acted within its discretion by refusing to reopen appellant's claim for review of the merits.

The November 15, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 13, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

⁵ 20 C.F.R. § 10.608(b); *Nancy Marcano*, 50 ECAB 110 (1998).

⁶ *Nancy Marcano*, *supra* note 5.