

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL L. DUNN, SR. and DEPARTMENT OF THE ARMY,
BLUEGRASS ARMY DEPOT, Lexington, KY

*Docket No. 01-2148; Submitted on the Record;
Issued May 1, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

The case has been on appeal previously.¹ In an April 4, 2001 decision, the Board noted that appellant claimed that he had pulmonary disease, asthma and tuberculosis due to exposure to a mercury spill at work. The Office denied appellant's claim in a March 14, 1994 decision. In a February 12, 1996 decision, an Office hearing representative affirmed the Office's decision. In an April 6, 1999 decision, appellant requested reconsideration. In an August 10, 1999 decision, the Office denied appellant's request for reconsideration on the grounds that his request was untimely and did not contain any clear evidence of error in the Office's decision. The Board found that the Office had properly determined that appellant's request for reconsideration was untimely and did not present clear evidence of error. The Board noted that, while appellant had established that the mercury spill had occurred as alleged, he failed to submit medical evidence to the Office that clearly showed his pulmonary condition was causally related to his exposure to mercury.

In an April 24, 2001 decision, appellant again requested reconsideration. He submitted evidence that he had submitted previously, primarily portions of transcripts from a hearing before an administrative law judge of the Equal Employment Opportunity Commission. Appellant also submitted the hazardous chemical information for mercury.

In a June 8, 2001 decision, the Office found that appellant had not submitted any new evidence or argument that showed clear evidence of error by the Office in denying appellant's claim. The Office further noted that appellant had not submitted any new evidence that the Office's prior decision was in error. The Office indicated that appellant had restated an

¹ Docket No. 00-403 (issued April 4, 2001). The history of the case is contained in the prior decision and is incorporated by reference.

argument that he had made prior to the Office's decision. The Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review of his claim.

The Board finds that the Office properly denied appellant's request for reconsideration.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advanced a point of law not previously considered by the Office or submitted relevant and pertinent evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.² 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.³ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁴ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁵

Appellant, in his request for reconsideration, submitted evidence that had been previously submitted and found irrelevant. He did not present any new legal arguments but only restated his argument that the employing establishment had not accepted that the mercury spill had occurred. The Office, in exercising its discretion in reviewing appellant's request for reconsideration, found that appellant had not met any of the standards that would require a review of his case on the merits. As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from known facts.⁶ There is no evidence that the Office abused its discretion in this case. The only evidence submitted by appellant has been reviewed by the Office and the Board previously. Appellant did not submit any new evidence that would require a merit review of his case by the Office.

² 20 C.F.R. § 10.608(b).

³ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁴ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁵ 20 C.F.R. § 10.608(b).

⁶ *Daniel J. Perea*, 42 ECAB 214 (1990).

The decision of the Office of Workers' Compensation Programs dated June 8, 2001 is hereby affirmed.

Dated, Washington, DC
May 1, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member