

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL L. MOONEY and U.S. POSTAL SERVICE,
POST OFFICE, Billerica, MA

*Docket No. 02-587; Submitted on the Record;
Issued October 22, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

On July 29, 1994 appellant, then a 36-year-old letter carrier, sustained a cervical strain, right shoulder strain and L405 disc herniation due to vehicular accident at work. By award of compensation dated May 2, 2000, the Office granted appellant a schedule award for an 18 percent permanent impairment of his left lower extremity. The Office based its award on an April 9, 2000 report of the district medical adviser.¹ By decision dated October 16, 2001, the Office denied appellant's request for merit review of his claim.²

The Board 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.

The only decision before the Board on this appeal is the Office's October 16, 2001 decision denying appellant's request for a review on the merits of its May 2, 2000 decision. Because more than one year has elapsed between the issuance of the Office's May 2, 2000 decision and January 29, 2001, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the May 2, 2000 decision.³

¹ The Office medical adviser essentially based his impairment calculations on the findings of Dr. John J. Walsh, Jr., an attending Board-certified orthopedic surgeon.

² The record also contains a December 7, 2001 decision, in which the Office denied appellant's claim that he sustained a recurrence of disability on August 9, 2000 due to his July 29, 1994 employment injury. Appellant has not appealed this decision and the matter is not currently before the Board.

³ See 20 C.F.R. § 501.3(d)(2).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁴ 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.⁵ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.⁶ 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.⁷

In connection with his March 29, 2001 reconsideration request,⁸ appellant submitted a February 14, 2001 report of Dr. Walsh, an attending Board-certified orthopedic surgeon. In this report, he indicated that the fact that appellant received a schedule award for an 18 percent permanent impairment of his left lower extremity shows that appellant had a 10 to 13 percent permanent impairment of his whole person. However, a schedule award is not payable under section 8107 of the Act for an impairment of the whole person.⁹ Therefore, this report is not relevant to the main issue of the present case, *i.e.*, whether the probative medical evidence shows that appellant has more than an 18 percent permanent impairment of his left leg. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰ Appellant also submitted administrative documents, nurse notes and clinic notes, but none of these documents contained a medical opinion regarding the extent of his permanent impairment. Therefore, they are not relevant to the main issue of the present case.

In the present case, appellant has not established that the Office abused its discretion in its October 16, 2001 decision, by denying his request for a review on the merits of its May 2, 2000 decision, under section 8128(a) of the Act, because he did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office.

⁴ 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).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ 20 C.F.R. § 10.607(a).

⁷ 20 C.F.R. § 10.608(b).

⁸ Appellant submitted a letter and numerous documents, which were received by the Office on March 29, 2001. The Office interpreted this submission to constitute a request for reconsideration of its May 2, 2000 decision.

⁹ See *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

¹⁰ *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

The October 16, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 22, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member