

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SALVATORE C. MARASSA and U.S. POSTAL SERVICE,  
POST OFFICE, Forest Park, IL

*Docket No. 02-1032; Submitted on the Record;  
Issued October 22, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, 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.

This is appellant's fifth appeal before the Board. In the first appeal, the Board affirmed a schedule award granted appellant on August 9, 1989.<sup>1</sup> The facts and circumstances of the case are delineated in this appeal and are hereby incorporated by reference. In the second appeal the Board dismissed the appeal as requested by appellant.<sup>2</sup> In the third appeal, the Board affirmed the Office's denial of appellant's claim for a recurrence of disability.<sup>3</sup> Further development of this case is delineated in this decision and is hereby incorporated by reference. Moreover a petition for reconsideration was denied on August 19, 1999. In the fourth appeal, the Board granted appellant's request to withdraw his appeal.<sup>4</sup> In this fifth appeal, appellant seeks review of denials of merit reconsideration dated March 14 and November 29, 2001 and March 5, 2002.

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.

The only decisions before the Board on this appeal are the Office's March 14 and November 29, 2001 and March 5, 2002 decisions denying appellant's application for reconsideration of the Office's November 13 and August 10, 1996 decisions which were

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<sup>1</sup> Docket No. 90-321 (issued April 5, 1990).

<sup>2</sup> Docket No. 95-82 (issued July 11, 1995).

<sup>3</sup> Docket No. 97-670 (issued March 10, 1999).

<sup>4</sup> Docket No. 00-2532 (issued January 31, 2001).

affirmed by the Board on March 10, 1999.<sup>5</sup> Because more than one year has elapsed between the issuance of the Board's March 10, 1999 merit decision and February 25, 2002, the postmarked date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the November 13 and August 10, 1996 decisions.<sup>6</sup>

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].”<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> When a claimant fails to meet one of the above-mentioned standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>10</sup>

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<sup>5</sup> September 27 and December 21, 1999 nonmerit decisions were also issued.

<sup>6</sup> See 20 C.F.R. § 501.3(d)(2). Moreover, the Board already considered these decisions on their merits for its March 10, 1999 decision.

<sup>7</sup> 20 C.F.R. § 10.606(b)(1), (2).

<sup>8</sup> 20 C.F.R. § 10.607(a).

<sup>9</sup> *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).

<sup>10</sup> 20 C.F.R. § 10.608(b); see *Mohamed Yunis*, *supra* note 9; *Elizabeth Pinero*, 46 ECAB 123 (1994); *Joseph W. Baxter*, 36 ECAB 228 (1984).

In support of his multiple reconsideration requests appellant submitted several personal statements which claimed that he was forced to work outside his physical restrictions and a February 17, 1991 medical report from Dr. Timothy Norton, a Board-certified orthopedic surgeon, stating that appellant could work within his restrictions but must avoid repetitive activity which “would have been too much” for his condition.

The Office conducted a limited review of the evidence and found that he failed to show that the Office erroneously applied or interpreted a specific point of law; he failed to advance a relevant legal argument not previously considered by the Office; and he failed to submit evidence which constituted relevant and pertinent new evidence not previously considered by Office. Therefore, the Office properly denied reopening of appellant’s case for a further review on its merits in accordance with 20 C.F.R. § 10.608(b).

This evidence is not relevant to the issue of the Office’s November 13 and August 10, 1996 decisions which were affirmed by the Board on March 10, 1999, which was whether or not appellant became disabled for light-duty work *vis-à-vis* a recurrence of total disability. Consequently, the repetitive argument and medical report submitted in support of appellant’s request for reconsideration of the November 13 and August 10, 1996 Office decisions do not constitute a basis for reopening a claim for further merit review. The Office accordingly properly denied appellant’s application for reopening his case for a further review on its merits.

In the present case, appellant has not established that the Office abused its discretion by denying his request for review of its November 13 and August 10, 1996 decisions on their merits.

Accordingly, the decisions of the Office of Workers’ Compensation Programs dated March 5, 2002 and November 29 and March 14, 2001 are hereby affirmed.

Dated, Washington, DC  
October 22, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member