

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL B. STINER and U.S. POSTAL SERVICE,
POST OFFICE, Decatur, IL

*Docket No. 02-1061; Submitted on the Record;
Issued October 7, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

This case is before the Board for the second time. Previously, the Board found that appellant had failed to timely file a request for reconsideration and also failed to establish clear evidence of error.¹ The law and the facts as set forth in the previous Board decision are incorporated herein by reference.

Subsequently, appellant expressed his disagreement with the previous decisions in a letter dated November 26, 2001 and submitted a copy of an August 5, 1998 removal letter by the employing establishment, a November 12, 1998 letter regarding unemployment benefits,² a September 9, 1998 decision terminating his benefits, an August 26, 1999 decision denying a schedule award and a copy of the Board's August 27, 2001 decision, a February 26, 1998 operation report by Dr. Terrence Pencek, a June 20, 1995 report by Dr. David B. Robson, a February 22, 2000 notice of disapproved claim by the Social Security Administration, progress reports dated February 23, 2000 and February 7, 1994, a copy of a request for a disability parking placard, the last page of a September 24, 1997 report by Dr. Edward A. Trudeau, copies of letters from the Office dated August 28, 1995 and February 4, 2000, a copy of a compensation check dated February 23, 1998 and a list of decisions and dates for letters he sent to the Office.

By decision dated February 22, 2002, the Office denied appellant's reconsideration request, finding that he failed to submit new, relevant evidence and the Office had no jurisdiction to review the Board's decision finding appellant had previously filed an untimely reconsideration request.

¹ Docket No. 00-2302 (issued August 27, 2001).

² The Board notes that it appears the designated employer was The Frick Company.

The Board finds that the Office properly denied appellant's request for a merit review.

The only decision before the Board in this appeal is the February 22, 2002 decision in which the Office denied appellant's application for review. Since more than one year had elapsed between the date of the Office's most recent merit decision dated September 9, 1998 and the filing of appellant's appeal on March 20, 2002, the Board lacks jurisdiction to review the merits of appellant's claim.³

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).⁴ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (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.⁵ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁶

In the present case, the Office denied appellant's claim without conducting a merit review on the grounds that the evidence submitted was irrelevant and immaterial. The medical evidence submitted by him was duplicative of evidence already contained in the record⁷ and was previously considered by the Office and found deficient. The remaining evidence submitted by appellant was neither new or relevant to the issue of whether the Office properly terminated his compensation benefits as he had been found capable of performing his usual position without restriction and had no continuing disability due to his accepted employment. He also contended that he timely submitted evidence subsequent to the September 9, 1998 decision, but has failed to supply any supporting documentation or submit any new evidence relevant to the underlying issue of whether he had any continuing disability due to his accepted February 7, 1994 employment injury. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review. Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did she submit relevant and pertinent evidence not

³ 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed. Section 501.2 provides that the Board's review of a case shall be limited to the evidence in the case record which was before the Office at the time of its final decision. The Board is unable to consider evidence for the first time on appeal; *see Marlene K. Cline*, 43 ECAB 580 (1992).

⁴ 20 C.F.R. § 10.608(a) (1999).

⁵ 20 C.F.R. § 10.608(b)(1) and (2) (1999).

⁶ 20 C.F.R. § 10.608(b).

⁷ 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; *see Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

previously considered by the Office.⁸ Therefore, appellant did not submit relevant evidence not previously considered by the Office.⁹

The decision of the Office of Workers' Compensation Programs dated February 22, 2002 is hereby affirmed.

Dated, Washington, DC
October 7, 2002

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ 20 C.F.R. § 10.606(b).

⁹ To the extent that appellant may have sought to have the Office review the Board's August 27, 2001 decision, the Board notes that the Office properly found that it is without authority to review a decision of the Board. *Theresa Johnson*, 50 ECAB 317 (1999).