

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LAWRENCE G. CLARK and DEPARTMENT OF AGRICULTURE,  
ANIMAL & PLANT HEALTH INSPECTION SERVICE, Cocoa, FL

*Docket No. 02-1163; Submitted on the Record;  
Issued October 23, 2002*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs, by its February 28, 2002 decision, abused its discretion by refusing to reopen appellant's case for further consideration of the merits of his claim under 5 U.S.C. § 8128(a).

This case was before the Board previously on appeal. By decision dated December 3, 2001, the Board found that appellant failed to establish that he sustained an injury to his right knee on August 7, 1998.

The Board has duly reviewed the case record and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim did not constitute an abuse of discretion.

By letter dated February 8, 2002, through his attorney, appellant requested reconsideration from the Office. In support of the request, appellant submitted several pages from a deposition taken from his supervisor, Dr. David Warner, for an equal employment opportunity case.

By decision dated February 28, 2002, the Office denied appellant's request for reconsideration finding that the evidence submitted was irrelevant to the issue of whether appellant sustained an injury while in the performance of duty on August 7, 1998, and therefore, was insufficient to warrant review of the prior decision.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> Because more than one year has elapsed between the issuance of the Office's last merit decision on August 18, 1999 and April 10, 2002, the date appellant filed his appeal with the Board,<sup>2</sup> the

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<sup>1</sup> *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

Board lacks jurisdiction to review the August 18, 1999 decision and any preceding decisions. Therefore, the only decision before the Board is the February 28, 2002 nonmerit decision denying appellant's claim for a review of its August 18, 1999 decision.

To require the Office to reopen a case for merit review, section 10.606 provides that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and setting forth arguments or submitting evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) submits relevant and pertinent new evidence not previously considered by the Office.<sup>3</sup> When a claimant fails to meet at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.<sup>4</sup>

In support of the February 8, 2002 request for reconsideration, appellant 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 new and relevant evidence. Appellant submitted several pages from a deposition taken from his supervisor, Dr. Warner, for an equal employment opportunity case. Dr. Warner was asked several questions concerning his knowledge of appellant sustaining an injury in approximately July 1998 and whether he observed appellant having difficulty walking. His responses were vague and equivocal. Most importantly, Dr. Warner did not address the relevant issue of whether or not appellant had sustained an injury while in the performance of duty on August 7, 1998.

As appellant's request for reconsideration dated February 8, 2002 did not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying this request.

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<sup>2</sup> Appellant's appeal was postmarked June 16, 2000.

<sup>3</sup> 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

<sup>4</sup> 20 C.F.R. § 10.608(a).

The February 28, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
October 23, 2002

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member