

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUSTINIANO TACTAY and DEPARTMENT OF THE ARMY,
WHEELER AIR FORCE BASE, HI

*Docket No. 02-1256; Submitted on the Record;
Issued October 3, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

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

On June 13, 2000 appellant, then a 66-year-old structural planner and estimator, filed a notice of occupational disease alleging that he sustained bilateral hearing loss in the performance of duty. Appellant stated that he performed "site checks" in loud noise areas, including repair shops, firing ranges and aircraft hangars.

Appellant submitted a May 15, 2000 narrative report, from Dr. D. Scott McCaffrey diagnosing him with high frequency hearing loss. Dr. McCaffrey found that appellant had a 26.9 percent binaural hearing loss and a 9 percent impairment of the whole person according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).¹ He also submitted three audiograms and filed a claim for a schedule award.

In a report dated September 8, 2000, Dr. Ronald Y.S. Chock, a Board-certified otolaryngologist, diagnosed appellant with bilateral high frequency hearing loss and opined that the loss was due to aging. Dr. Chock found that appellant had a zero percent bilateral hearing loss according to the A.M.A., *Guides*.² The district medical adviser agreed.

By decision dated November 2, 2000, the Office accepted appellant's condition for bilateral high frequency neurosensory hearing loss. Also on November 2, 2000 the Office denied appellant's claim for a schedule award finding that his hearing loss was not ratable.

By letter dated January 31, 2001, appellant requested reconsideration and submitted the May 15, 2000 report, from Dr. McCaffrey.

¹ A.M.A., *Guides* at 224 (4th ed. 1993).

² *Id.*

By decision dated April 30, 2001, the Office denied appellant's request for reconsideration.

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

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.³ Because more than one year has elapsed between the issuance of the Office's November 2, 2000 decision and April 10, 2002, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the November 2, 2000 decision and any preceding decisions. Therefore, the only decision before the Board is the Office's April 30, 2001, nonmerit decision denying appellant's application for review.

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) constitutes relevant and pertinent new evidence not previously considered by the Office.⁴ 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.⁵

In support of his January 31, 2001, request for reconsideration, appellant submitted the May 15, 2000, narrative report from Dr. McCaffrey. Dr. McCaffrey's report was already a part of the record at the time of the Office's November 2, 2000 decision. The Board has found that the submission of evidence or legal argument which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁶

As appellant's January 31, 2001 request for reconsideration does 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 that request.⁷

³ *Oel Noel Lovell*, 42 ECAB 537 (1991).

⁴ 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

⁵ 20 C.F.R. § 10.608(a).

⁶ *Alton L. Vann*, 48 ECAB 259 (1996).

⁷ Appellant is concerned that the Office never reviewed his physician's report. However, it is quite clear that the Office did consider it but found it inadequate.

The April 30, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 3, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member