

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARTHUR L. JINKS and U.S. POSTAL SERVICE,
POST OFFICE, Coppell, TX

*Docket No. 02-1084; Submitted on the Record;
Issued September 12, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
DAVID S. GERSON

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.

In April 1996 appellant, then a 43-year-old retired tractor-trailer operator, filed an occupational disease claim alleging that he sustained back strains while performing his work duties.¹ Appellant indicated that he first realized that his condition was employment related in December 1981. By decision dated July 31, 1996, the Office denied appellant's occupational disease claim on the grounds that it was not timely filed. By decisions dated September 10 and October 31, 1996, and April 14, 1997, the Office denied appellant's requests for merit review. Appellant requested an appeal of his claim before the Board and, by order dated January 12, 2000, the Board remanded the case to the Office for reconstruction and proper assemblage of the case record. The Board directed the Office to issue an appropriate decision in order to fully protect appellant's appeal rights.² By decision dated August 14, 2001, the Office denied appellant's request for merit review.³

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.

¹ Appellant retired from the employing establishment effective in 1991.

² On remand, the original case record was obtained by the Office. Appellant submitted additional evidence in support of his claim.

³ The Office reissued its April 14, 1997 decision in which it had denied appellant's request for merit review. The Office also effectively vacated its July 20, 2001 decision in which it had denied appellant's reconsideration request on the grounds that his request was untimely and failed to show clear evidence of error.

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 point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent 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 or her application for review within one year of the date of that decision.⁶ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁷

In support of his reconsideration request, appellant submitted medical reports from June 2000 which detailed the results of examination and diagnostic testing of his low back.⁸ Appellant also generally argued that his condition had deteriorated. However, this evidence is not relevant to the main issue of the present case, *i.e.*, whether appellant had established that he filed a timely occupational disease claim. 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.⁹

In the present case, appellant has not established that the Office abused its discretion in its August 14, 2001 decision by denying his request for a review on the merits of its decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, that he advanced a point of law or a fact not previously considered by the Office or that he submitted relevant and pertinent 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 his own motion or on application." 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. §§ 10.138(b)(1)-(2).

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁸ The reports did not discuss the cause of appellant's back condition or make note of claimed employment factors.

⁹ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decision of the Office of Workers' Compensation Programs dated August 14, 2001 is affirmed.

Dated, Washington, DC
September 12, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member