

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD B. JACKSON and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Chicago, IL

*Docket No. 03-536; Submitted on the Record;
Issued April 9, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs 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 has previously been before the Board. By decision issued on April 8, 2002, the Board affirmed an Office decision dated April 7, 2000, finding that appellant had the ability to earn wages as a community service officer, based on his actual earnings from May 1996 to May 1997. The Office adjusted appellant's compensation benefits accordingly beginning April 1, 2000.¹ The Board also found that the Office properly denied appellant's request for additional back surgery. The history of the case is discussed in the Board's prior decision and is incorporated herein by reference.

By letter dated September 16, 2002, appellant requested reconsideration of the April 7, 2000 decision. He stated: "I am asking for reconsideration of degree of my disability at this point I am receiving compensation for 47 percent of disability at this point I believe that I am more than 47 percent disabled." Appellant did not submit any new evidence with his request.²

By decision dated December 6, 2002, the Office denied appellant's request for reconsideration of the April 7, 2000 decision. The Office noted that the basis of appellant's request was unclear and referred him to his appeal rights, which accompanied the original decision. The Office also explained that appellant was not 47 percent disabled, but rather that he

¹ Docket No. 00-2776 (issued April 8, 2002).

² Appellant also stated in a letter dated September 18, 2002 that he would like to appeal a decision dated September 17, 2002. The Board notes that there is no such decision and the Office did not proceed with this request.

had a 47 percent wage-earning capacity, based on his actual earnings as a community service officer, using the *Shadrick*³ formula.

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.⁴ Because more than one year has elapsed between the issuance of the Office's April 7, 2000 merit decision and December 16, 2002, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the April 7, 2000 decision and any preceding decisions. Therefore, the only decision before the Board at this time is the Office's December 6, 2002 nonmerit decision denying appellant's application for review of its April 7, 2000 decision.

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

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.⁵ 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.⁶

In the instant case, it is unclear on what basis appellant requested reconsideration. In his September 16, 2002 letter, he stated that he was requesting reconsideration regarding his degree of disability, indicating that he was receiving compensation benefits "for 47 percent of disability." The Office interpreted appellant's letter to mean that he was requesting reconsideration of the Office's April 7, 2000 decision, regarding his ability to earn wages as a community service officer. The record indicates that appellant mistakenly believed that the Office determined that he was 47 percent disabled, when the Office actually determined that he had a 47 percent wage-earning capacity. The Office explained that a claimant's wage-earning capacity was determined by actual earnings if such actual earnings fairly and reasonably represented the claimant's wage-earning capacity. The formula for determining loss of wage-earning capacity based on actual earnings, developed in *Albert C. Shadrick*,⁷ has been codified at 20 C.F.R. § 10.403 of the Office's regulations. In this case, the Office reduced appellant's compensation benefits effective April 1, 2000, based on the fact that he had been earning wages for one year as a community service officer.

³ *Albert C. Shadrick*, 5 ECAB 376 (1953); see also 20 C.F.R. § 10.403.

⁴ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

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

⁶ 20 C.F.R. § 10.608(a).

⁷ *Supra* note 3.

Appellant did not set forth any legal arguments or submit any new and relevant evidence with his September 16, 2002 request for reconsideration. He also did not argue that the Office erroneously applied or interpreted a point of law. Appellant only expressed his belief that he was more than 47 percent disabled. Appellant's own beliefs regarding his degree of disability, even though inaccurate, are irrelevant to the issue at hand and are insufficient to require the Office to reopen his case for merit review. The relevant issue in this case is whether the position of community services officer fairly and reasonably reflected appellant's ability to earn wages. The record reflects that appellant worked as a community services officer from May 1996 through May 1997 earning wages of \$320.00 per week. The Office found in its April 7, 2000 decision that appellant had the ability to earn wages as a community service officer and adjusted his compensation accordingly. In order to reopen his case for a merit review, appellant would have to submit evidence showing that the community service officer position did not fairly and reasonably reflect his wage-earning capacity.

In a similar decision, *Patricia J. Sharkey*,⁸ appellant requested reconsideration of a decision reducing her compensation based upon her capacity to earn wages as a museum technician. In her letters requesting reconsideration, appellant did not submit any new evidence and did not argue that the Office erroneously applied or interpreted a specific point of law. She also did not advance a relevant legal argument not previously considered by the Office. Appellant merely requested reconsideration of the denial of her claim and reiterated her arguments that she was unable to perform the selected position of museum technician. The Board affirmed the Office's decisions denying merit review in *Sharkey*, since appellant did not meet at least one of the above-mentioned requirements to reopen a case for further consideration of the merits. In the present case, appellant also did not show that the Office erroneously applied or interpreted a specific point of law, did not advance new legal arguments previously not considered by the Office and did not submit any new or relevant evidence. Appellant merely stated in his September 16, 2002 letter that he believed he was more than 47 percent disabled. As in *Sharkey*, the Board finds that since appellant's request for reconsideration did not meet at least one of the three requirements for obtaining a merit review, the Office did not abuse its discretion in denying that request.

⁸ *Patricia J. Sharkey*, Docket No. 99-1929 (issued May 11, 2001).

The decision of the Office of Workers' Compensation Programs dated December 6, 2002 is hereby affirmed.

Dated, Washington, DC
April 9, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member