

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARNOLD FRAZIER, JR. and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Philadelphia, PA

*Docket No. 03-307; Submitted on the Record;
Issued February 5, 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, by its decision dated November 16, 2001, abused its discretion in refusing to reopen appellant's claim for merit review pursuant to 5 U.S.C. § 8128(a).

On May 31, 1995 appellant, then a 29-year-old mailhandler, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that, on that date, while unloading a truck, he sustained an injury to his back. This claim was accepted for lumbar strain.

On February 22, 1997 appellant filed a notice of recurrence alleging a recurrence of the May 31, 1995 injury on August 23, 1995. Although the recurrence was initially approved, the approval was rescinded by letter dated July 31, 1997.

Appellant filed numerous requests for reconsideration that resulted in the Office denying modification of its decision denying appellant's recurrence.¹ Appellant's claim was most recently reviewed on the merits and denied by decision dated January 16, 2001, at which time the Office denied modification of the prior decisions because appellant had not established that he was required to perform work which exceeded his physical restrictions during the period claimed and that he had not established that the employing establishment deliberately withheld information about his light-duty job assignment.

By letter faxed to the Office on August 16, 2001, appellant again requested reconsideration. In this letter, appellant indicated that his job assignment required him to exceed his lifting restrictions. Appellant did not submit any further evidence.

¹ The Office denied modification in decisions dated November 14, 1997, December 3, 1998, August 20 and November 29, 1999, April 12, 2000 and January 16, 2001. The Office denied merit review in decisions dated August 3, 1998, March 4, 1999, August 21, 2000 and November 16, 2001.

By decision dated November 15, 2001, the Office found that, as appellant's letter neither raised substantive legal questions nor included new and relevant evidence, it was insufficient to warrant a review of the Office's prior decision.

The Board finds that the Office properly denied appellant's request for reconsideration.

The only decision before the Board on this appeal is the Office's November 16, 2001 decision denying appellant's request for reconsideration. Because more than one year has elapsed between the issuance of the Office's other decisions and November 15, 2002, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review these decisions.²

To require the Office to reopen a case for merit review under section 8128(a) of the Act,³ the Office regulations provide that a claimant may obtain review of the merits of the claim by submitting evidence and argument that: (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 Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.

In this case, appellant submitted no new evidence in support of his claim in the current request for reconsideration; appellant only submitted a letter alleging that he exceeded his lifting restrictions while working for the employing establishment and that this caused a recurrence. Appellant has not raised any new arguments that the Office erroneously applied or interpreted a point of law, nor has appellant submitted any new relevant and pertinent evidence not previously considered by the Office. All the arguments raised in appellant's letter requesting reconsideration have been considered by the Office in its prior merit decisions.

² 5 U.S.C. § 8128(a).

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

The decision of the Office of Workers' Compensation Programs dated November 16, 2001 is hereby affirmed.

Dated, Washington, DC
February 5, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member