

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT M. CROWN and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

*Docket No. 00-561; Submitted on the Record;
Issued July 9, 2003*

DECISION and ORDER

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

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.

On November 12, 1997 appellant, then a 65-year-old letter carrier, filed a notice of occupational disease, Form CA-2, alleging that he developed bilateral foot pain as a result of extensive walking and standing while in the performance of duty. On his claim form and in a narrative statement submitted in support of his claim, appellant explained that he delivered mail on five different routes, one each day, and that his daily delivery route combined with the time for casing mail prior to delivery kept him on his feet approximately five and one-half to eight and one-half hours a day. Appellant did not stop work but continued with accommodations from his employer.

In a decision dated February 17, 1998, the Office denied appellant's claim on the grounds that despite a December 24, 1997 request for additional information, appellant had not submitted sufficient medical evidence to establish his claim for an employment-related medical condition.

By letter dated August 18, 1998, appellant requested reconsideration and submitted additional medical evidence in support of his claim. In a decision dated November 3, 1998, the Office found the newly submitted medical evidence to be insufficient to warrant modification of the prior decision. By letter dated July 20, 1999, appellant again requested reconsideration of the Office's prior decision. In a decision dated August 5, 1999, the Office denied appellant's request for reconsideration on the grounds that appellant's request neither raised substantive legal questions nor included new and relevant evidence and, therefore, was insufficient to warrant review of the prior decision.

The Board has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretion in denying appellant's request for review.

The only decision before the Board in this appeal is the Office's decision dated August 5, 1999 denying appellant's application for review. As more than one year elapsed between the date of the Office's most recent merit decision, dated November 3, 1998, and the filing of appellant's appeal, dated and postmarked November 4, 1999, the Board lacks jurisdiction to review the merits of appellant's claim.¹

Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.² Section 10.608 provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.³ In his letter requesting reconsideration, appellant did not set forth any legal arguments, but asked the Office to consider the attached medical reports which he asserted supported his claim. However, no medical or factual evidence accompanied appellant's letter. As appellant failed to raise substantive legal questions or to submit new relevant and pertinent evidence not previously reviewed by the Office, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.⁴

¹ 20 C.F.R. § 501.3(d)(2).

² 20 C.F.R. § 10.606(b).

³ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁴ The Board notes that appellant did submit a medical report from Dr. Harold W. Vogler, dated May 25, 2000, which was received into the record after the issuance of the Office's August 5, 1999 decision. The Board cannot consider this report, however, as the Board's review is limited to the evidence that was before the Office at the time it issued its final decision. 20 C.F.R. § 501.2(c); *Charles P. Mulholland, Jr.*, 48 ECAB 604 (1997); *Robert D. Clark*, 48 ECAB 422 (1997). Appellant may resubmit this report to the Office, together with a written request for reconsideration.

The decision of the Office of Workers' Compensation Programs dated August 5, 1999 is hereby affirmed.

Dated, Washington, DC
July 9, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member