

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWRENCE K. SCIBECK and DEPARTMENT OF THE NAVY,
NAVAL WEAPONS STATION, Seal Beach, CA

*Docket No. 03-730; Submitted on the Record;
Issued June 13, 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.

This is the second time this case has been before this Board. On November 5, 2001 the Board affirmed the decision dated May 17, 2000, wherein the hearing representative affirmed the Office's October 8, 1999 decision, denying appellant's claim which alleged a recurrence of disability commencing September 1, 1998 causally related to his work-related injury to his left knee on April 18, 1991. This Board also found that the Office, in its decision dated June 20, 2000, acted within its discretion by denying appellant's request that various subpoenas be issued. Finally, the Board found that the Office properly refused to reopen appellant's case for further consideration of the merits.¹ The law and facts as set forth in the prior decision are incorporated herein by reference.

By letter dated October 28, 2002, appellant, through his attorney, requested reconsideration. No new evidence was submitted at this time. By decision dated November 13, 2002, the Office denied appellant's request, as his attorney did not submit any new evidence, nor did he make any new arguments in support of his request for reconsideration.

With respect to the Board's jurisdiction to review final decisions of the Office, it is well established that an appeal must be filed no later than one year from the date of the Office's final decision.² As appellant filed his appeal on January 24, 2003, the only decision over which the Board has jurisdiction is the November 13, 2002 decision denying his request for reconsideration.

¹ Docket No. 00-2487 (issued November 5, 2001).

² See 20 C.F.R. § 501.3(d).

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for further review on the merits.

Section 10.606(b)(3) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.³ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁴

Appellant submitted no new evidence with his request for reconsideration and made no new arguments.⁵ The Office denied his claim for that reason. Accordingly, the Office properly denied appellant's request for reconsideration.⁶

The decision of the Office of Workers' Compensation Programs dated November 13, 2002 is hereby affirmed.

Dated, Washington, DC
June 13, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

³ 20 C.F.R. § 10.606(b)(2) (1999).

⁴ 20 C.F.R. § 10.608(b) (1999).

⁵ Appellant's attorney argues that his case was not, in fact, a recurrence but that his case should be reopened for medical treatment. However, the Office properly determined that appellant had not submitted medical evidence showing that his condition after September 1, 1998 was related to his accepted employment injury.

⁶ There is also evidence in the record of another request for reconsideration and accompanying medical report submitted after the Office's November 13, 2002 decision denying reconsideration and after appellant filed his appeal. The Board does not have jurisdiction to review such evidence on appeal. 20 C.F.R. § 501.2(c).