

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOE DIXON and DEPARTMENT OF THE NAVY,  
EAST COAST COMMISSARY COMPLEX, Camp LeJeune, NC

*Docket No. 03-164; Submitted on the Record;  
Issued March 3, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to warrant a merit review of the claim.

This is the second appeal in the present case.<sup>1</sup> In a prior appeal, the Board issued a decision and order on August 7, 2001 which affirmed the August 23, July 27 and May 25, 2000 Office decisions terminating compensation benefits on the grounds that appellant refused suitable employment and denied modification of the termination decision. The history of the case is found in the Board's prior decision and is incorporated herein by reference.

By letter dated November 20, 2001, appellant requested reconsideration. The Office denied appellant's request for reconsideration in a decision dated July 15, 2002.

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

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>2</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.<sup>3</sup> When a claimant fails to meet

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<sup>1</sup> Docket No. 01-42 (issued August 7, 2001).

<sup>2</sup> 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).

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>4</sup>

In this case, appellant has not raised any new arguments that the Office erroneously applied or interpreted a point of law. Further, the evidence he submitted does not support a claim of error. The only new evidence appellant submitted consisted of a letter from Dr. Robert Abraham, a Board-certified neurosurgeon, dated November 10, 2001. Dr. Abraham diagnosed appellant with lumbar spinal stenosis and opined that his abilities to function were severely limited. He stated that, considering appellant's diagnosis coupled with his bilateral knee disease, appellant was unemployable.

Dr. Abraham did not discuss how he reached his diagnosis of lumbar spinal stenosis or mention appellant's employment or the modified position offered by the employing establishment. Particularly, he did not discuss whether the position of customer service clerk offered by the employing establishment was suitable for appellant. This evidence is irrelevant on the issue of whether the Office properly terminated appellant's compensation under 5 U.S.C. § 8106(c)(2) for refusal of suitable employment.

The Board finds that appellant did not meet any of the requirements under section 10.606(b)(2) and, therefore, the Office properly denied the request for reconsideration without a merit review of the claim.

The July 15, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
March 3, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> 20 C.F.R. § 10.608(b).