

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN J. PIETROCATELLI and U.S. POSTAL SERVICE,  
POST OFFICE, Ironwood, MI

*Docket No. 03-313; Submitted on the Record;  
Issued March 11, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

This case has previously been on appeal before the Board. In its December 3, 2001 decision, the Board found that appellant failed to establish that he sustained a recurrence of disability on March 5, 1997 causally related to his accepted January 30, 1996 employment injury. The facts and the circumstances are set forth in the Board's December 3, 2001 decision and are herein incorporated by reference.<sup>1</sup>

By letter dated October 1, 2002, appellant, through his attorney, requested reconsideration and submitted evidence he believed to be pertinent to his case.

By decision dated October 18, 2002, the Office denied appellant's request for a merit review on the grounds that he did not show that the Office erroneously applied or interpreted a point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office.

The Board finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

To require the Office to reopen a case for merit review under section 8128 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

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<sup>1</sup> Docket No. 01-385 (issued December 3, 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 her own motion or on application." 5 U.S.C. § 8128(a).

evidence not previously considered by the Office.<sup>3</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>4</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

With his request for reconsideration, appellant submitted a September 12, 2002 letter from Dr. Alan E. Kravitz, a Board-certified internist, to his attorney. In this letter, Dr. Kravitz noted that he had received the materials sent to him and stated that the matter was black and white. He questioned the qualifications and findings of Dr. Burton Friedman, a Board-certified internist and impartial medical examiner. Regarding the Office's finding that appellant failed to establish a recurrence of disability on March 15, 1997,<sup>5</sup> Dr. Kravitz stated that he "made no comments on that." As Dr. Kravitz failed to address the main issue of the present case, *i.e.*, whether appellant had established that he sustained a recurrence of disability on March 5, 1997 causally related to his January 30, 1996 employment injury, his letter is irrelevant. The Board has held that the submission of evidence, which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>6</sup>

The October 18, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
March 11, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>3</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> The Board notes that Dr. Kravitz mistakenly indicated that the date of appellant's alleged recurrence of disability was March 15, 1997 rather than March 5, 1997.

<sup>6</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).