

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL M. GEITNER and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Duluth, MN

*Docket No. 03-510; Submitted on the Record;
Issued March 19, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

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).

On March 6, 2001 appellant, then a 34-year-old distribution clerk, filed a traumatic injury claim alleging that on that date he sustained a hernia in his lower abdomen. Appellant stated that he felt sharp pains and swelling in his abdomen and that "it just came on." Appellant underwent hernia surgery on March 15, 2001.

By decision dated September 10, 2001, the Office found the evidence of record insufficient to establish that appellant sustained an injury in the performance of duty.

Appellant requested reconsideration by letter dated October 16, 2001. Appellant's request was accompanied by correspondence from the Office including, the Office's September 10, 2001 decision and July 17, 2001 letter advising appellant to submit evidence supportive of his claim, his narrative statement describing the March 6, 2001 incident and an October 3, 2001 report from Dr. Thomas H. Wiig, a Board-certified surgeon, finding that appellant sustained his hernia injury at work.

By decision dated November 14, 2001, the Office denied appellant's request for modification based on a merit review of the claim finding that the newly submitted medical evidence failed to address whether appellant's hernia condition was caused by factors of his employment.

On September 9, 2002 appellant requested reconsideration by resubmitting his October 16, 2001 letter. In a decision dated September 18, 2002, the Office denied appellant's request for merit review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence, and thus, was insufficient to warrant a review of its prior decision.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed her request for an appeal on December 23, 2002, the only decision before the Board is the September 18, 2002 decision denying his request for a merit review.

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,² 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) constitute relevant and pertinent new evidence not previously considered by the Office.³ 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.⁴ 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.

In his October 16, 2001 letter, which was received by the Office on September 9, 2002, appellant stated that he would attempt to provide answers and explanations regarding the Office's September 10, 2001 decision. He indicated that the Office's July 17, 2001 letter, a letter from the operating physician and his description of the March 6, 2001 incident accompanied his request for reconsideration. The Board notes that this evidence did not accompany appellant's request. Appellant did not raise any substantive legal questions, and failed to submit any new relevant and pertinent evidence not previously reviewed by the Office. Therefore, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

¹ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 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).

³ 20 C.F.R. § 10.606(b)(1)-(2).

⁴ *Id.* at § 10.607(a).

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

Dated, Washington, DC
March 19, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member