

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD McNETT and U.S. POSTAL SERVICE,
POST OFFICE, Stockton, IL

*Docket No. 02-1027; Submitted on the Record;
Issued May 1, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On December 28, 1988 appellant, then a 36-year-old letter carrier, filed a notice of occupational disease claim indicating a foot injury causally related to his federal employment. The Office accepted the claim for bilateral plantar fasciitis and bilateral tarsal tunnel syndrome. Appellant began receiving compensation on the periodic rolls.

The record indicates that, on January 28, 1998, the employing establishment offered appellant a modified clerk position consistent with his work restrictions. The Office determined that the job offer constituted suitable work and gave appellant 30 days to accept the position or to provide his reasons for refusing the job offer. Appellant, however, did not respond to the job offer. By letter dated March 5, 1998, the Office gave appellant an additional 15 days to accept the job or have his compensation terminated. In a decision dated April 30, 1998, the Office terminated appellant's compensation.

Appellant subsequently requested a review of the written record. By decision dated March 30, 1999, an Office hearing representative affirmed the Office's April 30, 1998 decision.¹

On November 17, 2000 the Office received a letter from appellant requesting reconsideration. In his letter he indicated that he had sent a prior written request for reconsideration to the Office *via* certified mail on March 30, 2000. Appellant provided a copy of a report dated March 23, 2000 from Dr. Rokhshana Zaheen. The physician noted that appellant

¹ The Office hearing representative determined that, while appellant was under treatment for an emotional condition, it was not work related and did not prevent appellant from performing the duties of position deemed to be suitable work. His decision was based the opinion of a Board-certified psychologist and Office referral physician, Dr. Danilo Domingo.

had been seen in his office since 1991 for treatment of bipolar disorder and listed appellant's prescribed medication.

Appellant also submitted treatment notes and reports of psychological evaluation dating from March 1991 through February 1992 from Dr. Jane C. Smith.

The record indicates that the Office telephoned the post office where appellant alleged that he had mailed his certified letter on March 30, 2000, but the Office was informed that there was no documentation to support appellant's allegation that a certified letter had been sent on that date.

In a February 14, 2001 decision, the Office denied appellant's request for reconsideration on the merits under section 8128(a) on the grounds that his request was untimely filed and failed to establish clear evidence of error on behalf of the Office in terminating his compensation for failure to accept an offer of suitable work.

On April 27, 2001 appellant sent a facsimile to the Office that contained a letter requesting reconsideration and a copy of the missing certified mail receipt dated March 30, 2000. Appellant argued that since he was able to show that his reconsideration request was timely filed, the Office's February 14, 2001 decision was in error.

In a letter dated April 27, 2001, the Office informed appellant that it had received the copy of the certified mail receipt and asked appellant to verify whether or not any evidence had been submitted with his March 30, 2000 request.

In a July 16, 2001 decision, the Office denied appellant's request for reconsideration.²

The Board finds that this case is not in posture for a decision.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.³ The regulations provide that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.⁴ When an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁵ Evidence that does not address the

² The Board notes that the Office correctly treated appellant's reconsideration request as timely filed based on the copy of the certified mail receipt. 20 C.F.R. § 10.607(a) (1999).

³ 5 U.S.C. § 8128; see *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁴ 20 C.F.R. § 10.606(b) (1999).

⁵ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

particular issue involved also does not constitute a basis for reopening a case.⁶ Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.⁷

In this case, the Office denied reconsideration of appellant's claim based on a determination that he failed to submit any new and relevant evidence on reconsideration. The Board notes that appellant submitted new evidence consisting of treatment notes and reports of psychological evaluation dating from March 1991 through February 1992 from Dr. Jane C. Smith, a psychologist, who addressed appellant's post-traumatic stress disorder.⁸ Appellant also submitted a March 23, 2000 report from Dr. Zaheen, noting treatment for a bipolar disorder since 1991. The Board finds this to be new and relevant evidence to the issue of whether appellant refused an offer of suitable work.

The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence that may be necessary to discharge his or her burden of proof. The requirements pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office. If the Office should determine that the new evidence submitted lacks substantive probative value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.⁹

The Board finds that appellant's submission of new and relevant evidence on reconsideration entitles him to a merit review under section 8128. On remand, the Office is directed to perform a merit review of the evidence to determine whether the Office erred in terminating appellant's compensation based on a finding that he refused an offer of suitable work.

⁶ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁷ *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

⁸ *See* 20 C.F.R. § 501.2(c).

⁹ *Paul Kovash*, 49 ECAB 350 (1998); *Joseph L. Cabral*, 44 ECAB 152 (1992).

The July 16, 2001 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for development consistent with this opinion.

Dated, Washington, DC
May 1, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member