

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL L. BAXTER and U.S. POSTAL SERVICE,
POST OFFICE, Cranford, NJ

*Docket No. 03-1522; Submitted on the Record;
Issued October 3, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

This case has previously been before the Board. By decision issued August 8, 2002,¹ the Board affirmed an Office decision of July 27, 2001, which terminated appellant's compensation on the grounds that the weight of the medical evidence established that appellant had no disability or injury-related residuals after February 10, 2000. The facts of the case, as set forth in the Board's August 8, 2002 decision, are hereby incorporated by reference.

On August 30, 2002 appellant requested reconsideration and submitted additional evidence. By decision dated October 28, 2002, the Office denied appellant's request for reconsideration on the grounds that appellant failed to either raise substantive legal questions or include new and relevant evidence.

The Board finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of his or her claim under 5 U.S.C. § 8128(a) by written request to the Office identifying the decision and the specific issues within the decision, which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by: (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) submitting relevant and pertinent new evidence not previously considered by the Office.² Section 10.608(b) provides that any application for review of the merits of the claim, which does

¹ Docket No. 02-207.

² 20 C.F.R. § 10.606(b).

not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.³

In his August 30, 2002 reconsideration request, appellant resubmitted medical reports including those by Drs. M.F. Longnecker, Jr., Joe A. Jackson and Richard T. Furr, which appellant's counsel argued supported continuing employment-related disability. These reports were previously considered by the Office and, therefore, are duplicative of evidence already of record. As such this evidence is insufficient to warrant further merit review.⁴ The Office, in its October 28, 2002 decision denying appellant's application for review, properly noted that appellant had not raised any substantive legal questions nor included any new and relevant evidence and, therefore, appellant's request did not constitute a basis for reopening a case.⁵ As appellant failed to raise substantive legal questions or to submit new relevant and pertinent evidence not previously reviewed by the Office, the Office properly refused to reopen appellant's claim for review of the merits.

The decision of the Office of Workers' Compensation Programs dated October 28, 2002 is hereby affirmed.⁶

Dated, Washington, DC
October 3, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

³ 20 C.F.R. § 10.608(b).

⁴ The submission of evidence that repeats or duplicates that evidence already of record does not constitute a basis for reopening a claim for reconsideration of the merits. *See Edward W. Malaniak*, 51 ECAB 279 (2000).

⁵ *See James A. England*, 47 ECAB 115 (1995); *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

⁶ On appeal appellant, through counsel, requested the Board to review its previous August 8, 2002 decision. As appellant did not file a petition for reconsideration of the August 8, 2002 decision within 30 days of issuance, the decision became final. *See* 20 C.F.R. § 501.6(d).