

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICKEY C. LILLEY, SR. and DEPARTMENT OF THE NAVY,  
NORFOLK NAVAL SHIPYARD, Portsmouth, VA

*Docket No. 03-1870; Submitted on the Record;  
Issued September 11, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for reconsideration of the merits of his claim.

On February 14, 1995 appellant, then a 48-year-old retired machinist, filed an occupational disease claim alleging that he sustained chronic obstructive pulmonary disease and asbestosis due to exposure to dust, fumes, smoke and asbestos at work between 1981 and 1992.<sup>1</sup> The Office accepted that appellant sustained a work-related aggravation of asthma and emphysema and paid compensation for periods of disability. By decision dated February 5, 1999, the Office terminated appellant's compensation effective February 5, 1999 on the grounds that he had no disability after that date due to his accepted employment condition. By decision dated January 30, 2001, an Office hearing representative denied modification of the Office's February 5, 1999 decision. By decision dated March 31, 2003, the Office denied appellant's request for merit review.<sup>2</sup>

The Board finds that the Office properly refused to reopen appellant's case for reconsideration of the merits of his claim.

The only decision before the Board on this appeal is the Office's March 31, 2003 decision denying appellant's request for a review on the merits of its January 30, 2001 decision. Because more than one year has elapsed between the issuance of the Office's January 30, 2001

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<sup>1</sup> Appellant retired from the employing establishment in November 1992.

<sup>2</sup> By decision dated January 23, 1998, the Office denied appellant's claim that he was entitled to a schedule award for the lungs. By decisions dated September 17, 1998 and February 5, 1999, the Office denied modification of its prior decisions. This matter is not currently before the Board.

decision and July 16, 2003, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the January 30, 2001 decision.<sup>3</sup>

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>4</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) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>5</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>6</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 on the merits.<sup>7</sup>

In support of his January 17, 2002 reconsideration request, appellant submitted numerous medical reports: including August 25, 1999 and November 29, 2000 reports of Dr. Randall T. Bashore and a July 10, 1990 report of Dr. Gene H. Burke, each of whom were attending Board-certified pulmonary specialists; a March 16, 1998 report of Dr. S. Michael Sutton and a September 29, 1998 report of Dr. T. LePierre Watson, each of whom were attending Board-certified family practitioners; and an October 19, 1998 report of Dr. Steven H. Kaufman, a Board-certified pulmonary specialist who served as an Office referral physician. However, the submission of this medical evidence would not require reopening of appellant's claim because all of the evidence had previously been of record. The Board has held that the submission of evidence or argument which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>8</sup> In connection with his reconsideration request, appellant argued that his compensation should not have been terminated because his pulmonary condition was permanent rather than temporary.<sup>9</sup> However, appellant had previously made a similar argument and the Office had rejected it.

Appellant also submitted numerous administrative records in support of his reconsideration request. However, these records had previously been submitted to the Office. Moreover, these documents are not relevant to the main issue of the present case which is essentially medical in nature, *i.e.*, does the medical evidence presented by the Office show that appellant had no employment-related disability after February 5, 1999. The Board has held that

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<sup>3</sup> See 20 C.F.R. § 501.3(d)(2).

<sup>4</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).

<sup>5</sup> 20 C.F.R. §§ 10.606(b)(2).

<sup>6</sup> 20 C.F.R. § 10.607(a).

<sup>7</sup> 20 C.F.R. § 10.608(b).

<sup>8</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

<sup>9</sup> Appellant argued that he did not have emphysema prior to starting work for the employing establishment in 1981.

the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>10</sup>

In the present case, appellant has not established that the Office improperly refused to reopen his claim for a review on the merits of its January 30, 2001 decision under section 8128(a) of the Act, because he did not show that the Office erroneously applied or interpreted a specific 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 March 31, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
September 11, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>10</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).