

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**CHRISTIAN E. RASMUSSEN, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Mattatuck, NY, Employer**

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**Docket No. 04-554  
Issued: April 26, 2004**

*Appearances:*  
*Paul Kalker, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On December 22, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated December 2, 2003, denying his request for reconsideration. This case was previously before the Board.<sup>1</sup> Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the Office's December 22, 2003 decision denying appellant's request for reconsideration.

**ISSUE**

The issue is whether the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

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<sup>1</sup> Docket No. 02-658 (issued April 18, 2003).

## **FACTUAL HISTORY**

By decision dated April 18, 2003, the Board affirmed the Office's January 23, 2001 decision, which terminated appellant's compensation and an October 15, 2001 decision, suspending his eligibility for further compensation based on his obstruction of a medical examination. The Board's April 18, 2003 decision is herein incorporated by reference. Following the issuance of the Board's April 18, 2003 decision, appellant requested reconsideration of the Office's October 15, 2001 decision suspending his eligibility for compensation on the grounds that he obstructed a medical examination.<sup>2</sup> Appellant submitted new evidence consisting of an October 16, 2001 letter from his attorney which provided an explanation for his failure to appear for the September 26, 2001 MRI scan.<sup>3</sup> By decision dated December 2, 2003, the Office denied further reconsideration of the merits of the claim.

## **LEGAL PRECEDENT**

The Code of Federal Regulations provides 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) constituting relevant and pertinent evidence not previously considered by the Office.<sup>4</sup> When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>5</sup>

## **ANALYSIS**

In support of his August 21, 2003 request for reconsideration of the Office's October 15, 2001 decision,<sup>6</sup> appellant submitted an October 16, 2001 letter which provided an explanation for his failure to appear for the MRI scan scheduled for September 26, 2001. The Board finds that this October 16, 2001 letter constitutes relevant and pertinent evidence not previously considered by the Office as it addressed the issue of the Office's suspension of his compensation due to the failure to appear for the MRI scan. Therefore, it was an abuse of discretion for the Office to deny appellant's request for reconsideration.

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<sup>2</sup> Due to a conflict in the medical evidence, the Office had referred appellant for an examination by an impartial medical specialist, who subsequently requested a magnetic resonance imaging (MRI) scan and it was scheduled for September 26, 2001. Appellant did not appear for the MRI appointment.

<sup>3</sup> Appellant noted that the Board indicated in its April 18, 2003 decision that he could submit a copy of the October 16, 2001 letter to the Office with a request for reconsideration.

<sup>4</sup> 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> 20 C.F.R. § 10.608(b).

<sup>6</sup> As noted above, the Board issued a merit decision on April 18, 2003. A merit decision of the Board provides a one-year period to request reconsideration of a final decision of the Office. Since appellant's August 21, 2003 request for reconsideration was submitted to the Office within one year of the Board's April 18, 2003 decision, the request was timely filed. *Howard Y. Miyashiro*, 51 ECAB 253 (1999).

**CONCLUSION**

The Board finds that the Office abused its discretion in refusing to reopen appellant's claim for further merit consideration under 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 2, 2003 is set aside and the case is remanded for further action consistent with this decision.

Issued: April 26, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member