

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

MICHAEL G. BRUMMETT, Appellant

and

**DEPARTMENT OF THE ARMY, U.S. ARMY
RESERVE, Fort McCoy, WI, Employer**

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**Docket No. 03-0521
Issued: January 8, 2004**

Appearances:
Michael G. Brummett, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 16, 2002 appellant filed a timely appeal from the Office of Workers' Compensation Programs decision dated June 6, 2002, which denied merit review of appellant's request for reconsideration on the grounds that the evidence submitted was immaterial and, therefore, insufficient to warrant review of its prior decision regarding a traumatic injury claim. Because more than one year has elapsed between the last merit decision dated December 6, 2000 and the filing of this appeal on December 16, 2002 the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue on appeal is whether the Office properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This is the second appeal before the Board. In a decision issued on December 18, 2001, the Board affirmed the December 6, 2000 and February 13, 2001 decisions of the Office on the

grounds that the medical evidence of record was insufficient to establish that appellant sustained an injury while in the performance of his duties on March 22, 2000 and that the Office properly denied his request for a hearing under 5 U.S.C. § 8124(b).¹

The facts of the case are as follows. On May 11, 2000 the Office received a traumatic injury claim from appellant, then a 48-year-old mobile equipment inspector, alleging that he suffered lower back pain which radiated into the left leg on March 22, 2000 while unloading nine large tires. On December 6, 2000 the Office denied appellant's claim since the medical evidence submitted failed to establish that the claimed condition was caused by the employment incident. Appellant requested an oral hearing on January 17, 2001. By decision dated February 13, 2001, the Office denied his request for a hearing on the grounds that it was untimely filed pursuant to section 8124 of the Federal Employees' Compensation Act.

Appellant thereafter appealed to the Board and following the December 18, 2001 decision referenced above, he requested reconsideration on February 21, 2002 with the Office. In support of his request, appellant argued that he had personal hardships at home which caused his late filing for the oral hearing and he further clarified that the tires which caused his alleged injury were actually much larger than initially reported. Appellant submitted evidence, including a SF-50 Form, a letter from the Office of Personnel Management (OPM) regarding disability retirement, a Certified Summary of Federal Service, decisions from the Social Security Administration and Family Documentation.

By decision dated June 6, 2002, the Office denied appellant's request for merit review of his claim.

LEGAL PRECEDENT

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application. The Secretary in accordance with the facts found on review may --

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606(b)(2) (1999), a claimant may obtain review of the merits of the claim by submitting evidence and argument: (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 new evidence not previously considered by the Office. Section 10.608(b) (1999), provides that where the request is timely, but fails to meet at least one of the standards described in section 10.606(b)(2) (1999) or where

¹ Docket No. 01-1047 (issued March 22, 2000).

the request is untimely and fails to present any clear evidence of error, the Office will deny the application for reconsideration without reopening the case for a review on the merits.²

ANALYSIS

In the present case, relevant and pertinent new evidence did not accompany appellant's request for reconsideration. In connection with his request for reconsideration, he submitted a SF-50, a letter from OPM, a Certified Summary of Federal Service, decisions from the Social Security Administration and Family Documentation. The underlying issue in the claim, whether appellant sustained a diagnosed medical condition causally related to the work incident of March 22, 2000, is essentially medical in nature. The evidence submitted by him is irrelevant to this issue. Appellant also argued that the tires he lifted were sufficient to cause injury, but his own opinion on this medical matter also would not be relevant.

The Office correctly noted that appellant did not submit relevant and pertinent new evidence not previously considered by the Office supporting that he had a diagnosed medical condition as a result of the March 22, 2000 work incident. 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. Consequently, appellant is not entitled to a merit review of the merits of the claim based upon any of the above-noted requirements under 10.606(b)(2) (1999). Accordingly, the Board finds that the Office properly denied appellant's February 21, 2002 request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied merit review of appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.608(b) (1999).

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member