

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

JOHN WILKES, JR., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Elizabeth, NJ, Employer**

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**Docket No. 04-502
Issued: June 4, 2004**

Appearances:
John Wilkes, Jr., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 9, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated September 10, 2003, which denied his reconsideration request for merit review under 5 U.S.C. § 8128. Because more than one year has elapsed between the last Office merit decision dated October 6, 1983 and the last Board decision dated January 28, 1985, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c), 501.3(d)(2) and 501.6(c) and (d).

ISSUE

The issue is whether the Office properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This is appellant's second appeal before the Board. In the prior appeal, by decision dated January 28, 1985, the Office terminated compensation and medical benefits as of October 6, 1983, finding that he had no continuing injury-related disability or medical residuals requiring

treatment as of that date. The facts and circumstances of the case are presented in the Board's prior decision and are hereby incorporated by reference.¹ By letter dated May 16, 2003, appellant, now 70 years old, requested reconsideration of the Board's decision. In support, he submitted multiple medical reports dating from March through November 1982.

By decision dated September 10, 2003, the Office declined to reopen appellant's case for further review on its merits under 5 U.S.C. § 8128(a), on the grounds that the evidence submitted in support of the request was irrelevant and immaterial and was not sufficient to warrant review of the prior decision. In the Office's limited review of the evidence submitted, it addressed the November 16, 1982 report which addressed a November 1982 hospitalization from Dr. Clifford A. Botwin, a Board-certified osteopath specializing in orthopedic surgery, and found that it was irrelevant and did not constitute new and material evidence not previously considered.²

LEGAL PRECEDENT

Pursuant to 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that, 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 or argument that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.³ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁴

ANALYSIS

The only decision before the Board on this appeal is the Office's September 10, 2003 nonmerit decision denying appellant's application for reconsideration of the Office's January 13, 1984 decision denying his claim on the grounds that he failed to establish causal relationship.⁵ Because more than one year has elapsed between the issuance of the Office's January 13, 1984

¹ Docket No. 84-971. The Office had accepted that on October 5, 1967 appellant sustained chronic low back strain from lifting mail sacks.

² The report also mentioned conditions not accepted by the Office.

³ *Helen E. Paglinawan*, 51 ECAB 591 (2000).

⁴ *Kevin M. Fatzner*, 51 ECAB 407 (2000).

⁵ Appellant actually requested that the Office review the Board's January 28, 1985 decision. This cannot be done under 20 C.F.R. § 501.6(c) and (d). However, the Office properly denied appellant's request related to its January 13, 1984 decision.

merit decision and December 9, 2003, the stamped date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the January 13, 1984 decision.⁶

In this case, appellant submitted multiple medical reports dating from March through November 1982 with the argument that they were not included in his original case record. The Office properly pointed out that most of the reports were dated 1982 and had been previously considered by the Office and the Board on the prior appeal. Therefore, the Board finds that they already were part of the original case record and had been previously considered by both the Office and Board. Accordingly, they are repetitive and do not constitute a basis for reopening appellant's claim for a further review on its merits.

However, the one new report from Dr. Botwin dated November 16, 1982 appears to have not been previously considered and the Office conducted a limited review to determine whether or not it was new, relevant evidence not previously considered. The Office, therefore, noted that the report addressed appellant's November 1982 hospitalization and was not relevant to the termination of his benefits one year later.

The Board finds that the November 16, 1982 report is not relevant to appellant's condition as of the October 6, 1983 termination of compensation because it did not address appellant's condition on or after October 6, 1983, the date of termination.

CONCLUSION

Based upon the above-noted limited review of the November 16, 1982 medical report, it is not relevant to either the termination of compensation or medical benefits which occurred over a year later.

⁶ 20 C.F.R. § 501.3(d)(2)(ii). This most recent January 13, 1984 merit decision of the Office was already reviewed in preparation for the Board's January 28, 1985 final decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 10, 2003 be and hereby is affirmed.

Issued: June 4, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member