

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

PHILLIP J. LEVY, Appellant

and

**DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL BUS CENTER,
Philadelphia, PA, Employer**

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**Docket No. 05-1640
Issued: December 21, 2005**

Appearances:

*Thomas Martin, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 2, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated April 27, 2005, denying his request for further merit review of his claim. The most recent merit decision of the Office was a July 23, 2003 decision which denied modification of prior decisions which terminated appellant's compensation benefits. Because more than one year has elapsed between the most recent merit decision of the Office and the filing of this appeal on August 2, 2005, the Board lacks jurisdiction to review the merits of this claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

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

FACTUAL HISTORY

This case has previously been on appeal before the Board.¹ In a May 15, 2001 decision, the Board affirmed the January 29, 1999 decision of the Office, finding that appellant had not presented clear evidence of error, as he did not submit any medical or factual evidence sufficient to show that the Office erred in its termination of his compensation benefits. The facts and the history contained in the prior appeal are incorporated herein by reference.

By letter dated June 11, 2001, the Office advised appellant that he could submit a request for reconsideration at any time. Appellant was also advised that he must provide evidence that demonstrated clear evidence of error on the part of the Office.

By letter dated May 4, 2002, appellant requested reconsideration. Appellant repeated his previous arguments and he submitted evidence. By letter dated May 7, 2003, appellant requested the status of his May 4, 2002 request for reconsideration.

By letter of the same date, the Office advised appellant that his request for reconsideration was received by the Office on May 10, 2002; however, it was associated with an incorrect case record. Appellant was advised that his case was being assigned to a claims examiner.

By decision dated July 23, 2003, the Office conducted a merit review and denied modification of the prior November 5, 1996 decision in which an Office hearing representative affirmed the termination of appellant's compensation benefits.

By letter dated July 22, 2004, appellant requested reconsideration. He repeated his allegations that the October 17, 1995 report of Dr. Cox, the second opinion physician whom the Office relied upon to terminate his benefits, was inaccurate.

By decision dated April 27, 2005, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that his request was repetitive and irrelevant. The Office advised appellant that his request failed to show that the Office erroneously applied or interpreted a specific point of law, and failed to advance relevant legal evidence not previously considered by the Office and was thus insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,² the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain

¹ Docket No. 99-1996 (issued May 15, 2001).

² 5 U.S.C. § 8128(a).

review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence which:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office].”³

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁴

ANALYSIS

Appellant disagreed with the termination of his compensation and benefits and requested reconsideration on July 22, 2004. The underlying issue on reconsideration was whether appellant had any disability after February 4, 1996 causally related to his accepted December 11, 1967 back strain and aggravation of degenerative disc disease. However, appellant did not provide any relevant or pertinent new evidence to the issue of whether he had any disability after February 4, 1996 causally related to his accepted December 11, 1967 back strain and aggravation of degenerative disc disease. For example, appellant did not submit any new medical evidence with regard to whether he had any disability after February 4, 1996 causally related to his accepted December 11, 1967 back strain and aggravation of degenerative disc disease.

The allegations contained in his July 22, 2004 request for reconsideration essentially reiterate his previous arguments, including allegations that the October 17, 1995 report of Dr. Cox, the second opinion physician, whom the Office relied upon to terminate his benefits, was inaccurate. These allegations were addressed in the Office’s previous decision dated July 23, 2003. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.⁵

Consequently, appellant has not submitted relevant and pertinent new evidence not previously considered by the Office; nor has he shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously considered by the Office. Therefore, the Office properly denied his request for reconsideration without conducting a merit review of the claim.

³ 20 C.F.R. § 10.606(b).

⁴ *Id.* at § 10.608(b).

⁵ *David J. McDonald*, 50 ECAB 185 (1998); *John Polito*, 50 ECAB 347 (1999); *Khambandith Vorapanya*, 50 ECAB 490 (1999).

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 27, 2005 is affirmed.

Issued: December 21, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board