

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

<b>WILLIE F. STRIPLING, Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 05-461</b>
	)	<b>Issued: June 1, 2005</b>
<b>DEPARTMENT OF THE AIR FORCE, ROBINS</b>	)	
<b>AIR FORCE BASE, GA, Employer</b>	)	
	)	

*Appearances:*  
*Willie F. Stripling, 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  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On December 16, 2004 appellant filed a timely appeal of an October 6, 2004 nonmerit decision of the Office of Workers' Compensation Programs. As the most recent decision on the merits of appellant's claim was a March 15, 1993 Office decision, the Board lacks jurisdiction to review the merits of the case, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.<sup>1</sup>

**ISSUE**

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of his claim.

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<sup>1</sup> These sections of the Board's regulations require that an appeal be filed within one year of the date of the issuance of the Office's decision being appealed.

## **FACTUAL HISTORY**

This case has been before the Board on two prior appeals. The Board's decision dated March 11, 1996<sup>2</sup> sets forth the facts and history of the case up to that time, which are hereby incorporated by reference. In a December 13, 1999 decision finding that appellant's June 11, 1997 request for reconsideration was not timely filed and did not demonstrate clear evidence of error, the Board noted that the most recent decision on the merits of appellant's claim was issued by the Office on March 15, 1993.<sup>3</sup> In the March 15, 1993 decision, the Office denied modification of a November 16, 1992 decision finding that the medical evidence was insufficient to establish that appellant's cervical spine condition was causally related to a May 13, 1991 employment incident.

Following the Board's decision, appellant requested reconsideration on May 30, 2001. By decision dated July 27, 2001, the Office found this request was not timely filed and did not demonstrate clear evidence of error.

By letter dated May 5, 2004, appellant requested reconsideration by the Office. In a June 24, 2004 letter, the Office advised appellant that it was not clear what decision or issues he was asking it to reconsider, and that a request for reconsideration must be accompanied by relevant new evidence or a legal argument not previously considered. In a June 30, 2004 letter, appellant contended that he did not receive an October 23, 2000 Office letter because it was wrongly addressed, and contended that his cervical disc condition was related to his employment. He requested that his case be reconsidered. Appellant submitted a copy of a Board decision which, he contended, presented a similar situation to his, and a copy of an August 21, 1997 Office letter to appellant's congressional representative stating that his request for reconsideration would be assigned for review.

By decision dated October 6, 2004, the Office found that appellant's request for reconsideration did not present any substantive legal question or relevant new evidence, and was therefore insufficient to warrant review of its prior decisions.

## **LEGAL PRECEDENT**

Section 8128(a) of the Federal Employees' Compensation 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 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.”

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<sup>2</sup> Docket No. 94-1293 (issued March 11, 1996).

<sup>3</sup> Docket No. 98-1817 (issued December 13, 1999).

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific 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 that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>4</sup> Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>5</sup>

### **ANALYSIS**

Appellant's June 30, 2004 letter does not show that the Office erroneously applied or interpreted a specific point of law, nor does it advance a relevant legal argument not previously considered by the Office. Appellant's contention that he did not receive the Office's October 23, 2000 informational letter, even if true, does not meet either of these criteria.<sup>6</sup> Appellant also did not submit new and relevant evidence, as neither the Office's August 21, 1997 letter nor the Board's decision he submitted relate to the determinative issue of whether appellant's cervical spine condition is related to the May 13, 1991 employment incident. Causal relationship is a medical question that generally can only be resolved by competent medical evidence.<sup>7</sup>

### **CONCLUSION**

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

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<sup>4</sup> *Eugene F. Butler*, 36 ECAB 393 (1984).

<sup>5</sup> *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

<sup>6</sup> The copy of the October 23, 2000 letter in the case record indicates it was re-sent to appellant's correct address on January 29, 2001.

<sup>7</sup> *Ausberto Guzman*, 25 ECAB 362 (1974).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 6, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member