

FACTUAL HISTORY

On September 16, 1999 appellant, then a 44-year-old mail handler, sustained a right wrist injury. By decision dated October 2, 2003, the Office denied his claim for a recurrence of disability.¹

On October 1, 2004 appellant requested reconsideration but did not submit any additional evidence or argument.

By decision dated February 26, 2008, the Office denied appellant's request for reconsideration on the grounds that the evidence was not sufficient to warrant further merit review of his claim.²

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act³ does not entitle a claimant to a review of an Office decision as a matter of right. This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.⁴ It, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁵

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁶ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁷ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁸ When a claimant fails

¹ The original case record was apparently lost at some point.

² Subsequent to the February 26, 2008 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

³ 5 U.S.C. §§ 8101-8193.

⁴ 5 U.S.C. § 8128(a).

⁵ *Annette Louise*, 54 ECAB 783, 789-90 (2003).

⁶ Under section 8128(a) of the Act, "[t]he 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." *See supra* note 4.

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ *Id.* at § 10.607(a).

to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁹

ANALYSIS

On October 1, 2004 appellant requested reconsideration of the October 2, 2003 merit decision denying his claim for a recurrence of disability. He did not submit any additional evidence or argument with his reconsideration request. Because appellant did not submit evidence or argument that showed that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered or constituted relevant and pertinent new evidence not previously considered by the Office, the Office properly denied his request for reconsideration.

On appeal, appellant asserts that the Office failed to review a report from a Dr. Joseph Kutz. However, the record reflects that the Office addressed a report from Dr. Kutz in its October 2, 2003 decision.

CONCLUSION

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

⁹ *Id.* at § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 26, 2008 is affirmed.

Issued: February 12, 2009
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board