

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LASZLO MECS and DEPARTMENT OF COMMERCE,
BUREAU OF THE CENSUS, Van Nuys, Calif.

*Docket No. 97-2098; Submitted on the Record;
Issued April 1, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

The only Office decision before the Board on this appeal is the Office's May 22, 1996 decision finding that appellant's application for review was not sufficient to warrant review of its prior decision. Since more than one year elapsed between the date of the Office's most recent merit decision on April 26, 1995 and the filing of appellant's appeal on May 21, 1997, the Board lacks jurisdiction to review the merits of appellant's claim.¹

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.”

Under 20 C.F.R. § 10.138(b)(1), 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 point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that

¹ 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed.

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.² Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.³

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).

Appellant did not submit any new evidence with his April 9, 1996 request for reconsideration of the Office's April 26, 1995 decision, by which the Office found that the weight of the medical evidence established that appellant had no residuals causally related his June 1, 1990 injury after May 23, 1991. In his April 9, 1996 request for reconsideration, appellant stated that he still had pain, that he had no pain before his employment injury, that his degenerative disc disease did not hurt him before his employment injury, that he was now two inches shorter than before his employment injury, and that this injury had also caused a permanent hearing loss and brain damage. Appellant then critiqued the report of the impartial medical specialist, concluding that he lies.

Appellant's request for reconsideration does not show that the Office erroneously applied or interpreted a point of law. His request also does not advance a point of law or fact not previously considered by the Office. Whether an employment injury causes an employee to be disabled for work is a medical question that can be resolved only by competent medical evidence.⁴

² *Eugene F. Butler*, 36 ECAB 393 (1984).

³ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁴ *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

The decision of the Office of Workers' Compensation Programs dated May 22, 1996 is affirmed.

Dated, Washington, D.C.
April 1, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member