

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY RAGUNAS and DEPARTMENT OF THE ARMY,
FORT EUSTIS, VA

*Docket No. 97-2749; Submitted on the Record;
Issued August 19, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's September 4, 1996 request for reconsideration was insufficient to reopen the claim for merit review.

In the present case, the Office accepted that appellant sustained a low back strain and aggravation of degenerative spinal arthritis and degenerative joint disease, causally related to factors of his federal employment. The record indicates that appellant's light-duty position was terminated in March 1984 and he began receiving compensation for temporary total disability.

By decision dated September 7, 1995, the Office terminated appellant's compensation effective September 16, 1995 on the grounds that he had refused an offer of suitable work. In a decision dated July 1, 1996, the Office found that a March 18, 1996 request for reconsideration was insufficient to warrant a merit review of the case.

In a letter dated September 4, 1996, appellant again requested reconsideration of his claim. By decision dated May 30, 1997, the Office determined that the September 4, 1996 request for reconsideration was insufficient to warrant merit review of the claim.

The Board has reviewed the record and finds that the Office properly refused to reopen the case for merit review.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.¹ Since appellant filed his appeal on August 25, 1997, the only decision over which the Board has jurisdiction on this appeal is the May 30, 1997 decision denying his request for reconsideration.

¹ 20 C.F.R. § 501.3(d).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.³ Section 10.138(b)(2) states that any application for review that does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.⁴

The Board finds that appellant's September 4, 1996 request for reconsideration does not meet any of the requirements for reopening a case. The September 4, 1996 letter indicates that appellant attempted to determine from the employing establishment whether the offered position involved bending and lifting, and was told by the commissary officer that all information had already been provided. Appellant did not offer any new evidence or argument in support of his request for reconsideration. The Board notes that appellant had previously argued that the offered position was outside his physical restrictions. The September 4, 1996 request for reconsideration does not provide any new and relevant evidence, nor does it otherwise meet any of the requirements of section 10.138(b)(1). Accordingly, the Board finds that the Office properly refused to reopen the case for merit review.

The decision of the Office of Workers' Compensation Programs dated May 30, 1997 is affirmed.

Dated, Washington, D.C.
August 19, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

² 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application)."

³ 20 C.F.R. § 10.138(b)(1).

⁴ 20 C.F.R. § 10.138(b)(2); *see also Norman W. Hanson*, 45 ECAB 430 (1994).