

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEAN P. WORDEN and DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE, Port Angeles, WA

*Docket No. 99-1261; Submitted on the Record;
Issued February 21, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

The Board has fully reviewed the case record in the present appeal and finds that the Office did not abuse its discretion in denying appellant's request for review of the merits of his claim.

On March 16, 1983 appellant, then a 44-year-old maintenance worker, submitted a claim for compensation for a back injury he sustained on March 15, 1983 which was accepted by the Office for lumbar subluxation. Appellant subsequently filed a claim for a back and neck injury he sustained on May 14 and 15, 1985 which was accepted for aggravation of his preexisting degenerative disc disease at C5-6 and subluxation at C1-2 and C6. In a June 23, 1997 decision, the Office terminated appellant's compensation benefits effective June 23, 1997 stating that the medical evidence of record established that appellant no longer suffered residuals of his May 15, 1985 employment injury. In so finding, the Office relied on the medical opinion of the referral physician, Dr. Charles Miller, a Board-certified orthopedic surgeon, dated April 23, 1997, that there was no objective evidence of total disability, no permanent aggravation of appellant's work condition and no evidence of any work-related disability. Appellant requested written review of the record, and by decision dated November 4, 1997, the Office hearing representative affirmed the Office's June 23, 1997 decision.

By letter dated June 23, 1998, appellant requested reconsideration of the Office's decision. He requested "medical help from a government physician to give [him] pain medication, magnetic resonance imaging test, and other p[re]scribed medication." Appellant stated that his "spinal-degeneration case/history ha[d] once again "flared up" real bad!" With his request, appellant submitted the cover letter to the Office hearing representative's November 9, 1997 decision.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed the appeal with the Board on March 16, 1999, the only decision properly before the Board is the July 16, 1998 decision denying appellant's request for reconsideration.

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 provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.³ Section 10.138(b)(2) 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.⁴ 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.⁵ Evidence that does not address the particular issue involved, in this case whether the Office properly terminated benefits effective June 23, 1997, does not constitute a basis for reopening the case.⁶

The only evidence appellant submitted with his request for reconsideration was the cover letter of the Office hearing representative's November 7, 1997 decision. This does not constitute relevant or pertinent evidence not previously considered by the Office. Further, appellant did not show that the Office erroneously applied or interpreted a point of law and did not advance any point of law not previously considered by the Office. As appellant did not meet any of the criteria for obtaining merit review of his claim, the Board finds that the Office properly denied appellant's application for reconsideration.

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.138(b)(1) and (2).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁶ *Richard L. Ballard*, *supra* note 5 at 150; *Edward Mathew Diekemper*, 31 ECAB 224, 225 (1979).

The decision of the Office of Workers' Compensation Programs dated July 16, 1998 is hereby affirmed.

Dated, Washington, DC
February 21, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member