

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL M. HUGHES and U.S. POSTAL SERVICE,
RAUINIA POST OFFICE, Highland Park, IL

*Docket No. 99-2037; Submitted on the Record;
Issued January 8, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

The case has been on appeal previously.¹ In an April 2, 1998 decision, the Board found that appellant injured his left knee on March 3, 1989, sustaining a torn medial meniscus and, subsequently, a stress fracture of the second toe. Appellant received a schedule award for a 43 percent permanent impairment of the left leg. He returned to work as a modified distribution clerk but stopped working on July 30, 1993 and received disability retirement benefits. The Office determined that appellant could still perform the duties of a modified distribution clerk four hours a day and that he had a 39 percent loss of wage-earning capacity. An Office hearing representative affirmed the Office's decision. The Board found that appellant had returned to light-duty work and subsequently did not submit sufficient rationalized medical evidence to establish that there had been a change in the nature and extent of his left knee condition to the point that he was unable to perform the light-duty position. The Board noted that appellant had submitted evidence that he was entitled to compensation at an augmented rate because he had a dependent. The Board remanded the case for further development of that issue.

In a November 9, 1998 letter, appellant requested reconsideration. He contended that he was never given a four-hour light-duty job. He argued that Dr. Bipin V. Bavishi, a Board-certified orthopedic surgeon whose report provided the basis for the Office's decision, had stated that appellant might be able to sit for a total of four hours a day with intermittent changes of position. Appellant contended that his modified distribution clerk position was full time. He argued that the Office had failed to submit this evidence which deprived him of due process.

¹ Docket No. 96-900 (issued April 2, 1998).

In a February 8, 1999 decision, the Office denied appellant's request for reconsideration finding that he neither raised substantive legal questions nor included new and relevant evidence and therefore his request was insufficient to warrant review of the Office's prior decisions.

The Board finds that the Office properly denied appellant's request for reconsideration.

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, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent 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.² 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.³ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁴

Appellant did not submit any new evidence in support of his request for reconsideration. He argued that Dr. Bavishi's report that he might be able to work four hours a day contradicted the conclusion of the Office that he could still perform the duties of a modified distribution clerk position. The Board notes that both the Office and the Board have previously considered Dr. Bavishi's report in reaching the conclusion that appellant could perform the duties of a modified distribution clerk four hours a day and therefore had a loss of wage-earning capacity. Appellant's argument therefore addresses legal issues that have previously been considered by the Office and the Board. As appellant has not raised a new, substantive legal argument, he is not entitled to reconsideration of the Office's decision.

² 20 C.F.R. § 10.608(b).

³ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁴ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decision of the Office of Workers' Compensation Programs dated February 8, 1999 is hereby affirmed.

Dated, Washington, DC
January 8, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member