

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL SKIPPER and DEPARTMENT OF THE AIR FORCE,
NATIONAL GUARD BUREAU, Charlotte, NC

*Docket No. 01-1810; Submitted on the Record;
Issued August 7, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that he sustained a consequential left knee condition in the performance of duty causally related to his accepted December 1, 1981 and July 22, 1982 employment injuries; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further review of the merits of his claim under 5 U.S.C. § 8128(a).

The Board has given careful consideration to the issue whether appellant has established that he sustained a consequential left knee condition in the performance of duty causally related to his accepted December 1, 1981 and July 22, 1982 employment injuries, the contentions of the parties on appeal and the entire case record. The Board finds that the February 5, 2001 decision of the Office's hearing representative is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for further review of the merits of his claim under 5 U.S.C. § 8128(a).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ the Office's regulations provide that 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) submit relevant and pertinent new evidence not previously considered by the Office.² 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.³ When a claimant fails to

¹ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.606(b)(1)-(2).

³ *Id.* at § 10.607(a).

meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.⁴

In his March 17, 2001 letter, appellant merely requested reconsideration of the hearing representative's February 5, 2001 decision. Appellant stated "additional information and medical records will follow shortly." Appellant did not submit any additional evidence in support of his claim that he sustained a consequential left knee condition in the performance of duty causally related to his accepted December 1, 1981 employment injury prior to the Office's April 11, 2001 decision denying his request for reconsideration.

Accordingly, the Board finds that appellant did not raise any substantive legal questions, and failed to submit any new relevant and pertinent evidence not previously reviewed by the Office. Thus, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

The April 11 and February 5, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
August 7, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ *Id.* at § 10.608(b).