

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SAMMY L. EATON and U.S. POSTAL SERVICE,  
POST OFFICE, Indianapolis, IN

*Docket No. 02-2335; Submitted on the Record;  
Issued February 20, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied a merit review of appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

On June 15, 1999 appellant, then a 31-year-old letter carrier, filed a traumatic injury claim alleging that on June 15, 1999 he injured his left big toe while delivering mail. The Office accepted the claim for a great toe contusion and that his preexisting bunion and bunionectomy were not accepted.

In an operative report dated August 21, 2000, Dr. George V. Tsoutsouris, an attending podiatrist, diagnosed bilateral hallux valgus and performed a radical bunionectomy with osteotomy in the left foot.

On December 8, 2000 appellant filed a recurrence claim alleging that his disability beginning August 21, 2000 was due to his accepted employment injury.

In a December 8, 2000 report, Dr. Adolphus A. Anekwe noted that he treated appellant for his original June 15, 1999 injury when he diagnosed a "severe sprain of the left great toe." He concluded that appellant was totally disabled for the period November 14 to 17, 2000 due to anxiety neurosis and "status post left great toe injury."

By letter dated March 20, 2001, the Office advised appellant that the evidence of record was insufficient to support his recurrence claim. The Office advised appellant of the type of medical and factual evidence required to support his claim.

In a report dated May 14, 2001, Dr. Anekwe noted that appellant had been referred to a podiatrist subsequent to his June 15, 1999 injury who recommended surgery. The recommended surgery was performed on August 21, 2000. Dr. Anekwe opined that appellant's absence in November was due to his accepted June 15, 1999 employment injury.

By decision dated July 30, 2001, the Office denied appellant's recurrence claim.

By letter dated September 10, 2001, appellant requested reconsideration.

By decision dated November 21, 2001, the Office denied appellant's request for a review of the merits of the case after finding that he failed to submit any new evidence in support of the request for review sufficient to warrant a merit review of its prior 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.<sup>1</sup> As appellant filed his appeal with the Board on August 26, 2002, the Board lacks jurisdiction to review the Office's most recent merit decision dated July 31, 2001. Consequently, the only decision properly before the Board is the Office's November 21, 2001 decision denying appellant's request for reconsideration.

The Board finds that the Office properly denied a merit review of appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

Section 8128(a) of the Federal Employees' Compensation Act<sup>2</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation.<sup>3</sup> Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.<sup>4</sup>

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>5</sup> The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>6</sup>

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<sup>1</sup> 20 C.F.R. §§ 501.2(c), 501.3(d)(2) (1998) and 20 C.F.R. § 10.607(a) (1999).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 5 U.S.C. § 8128(a) ("The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

<sup>4</sup> *Veletta C. Coleman*, 48 ECAB 367, 368 (1997).

<sup>5</sup> 20 C.F.R. § 10.608(a) (1999).

<sup>6</sup> 20 C.F.R. § 10.606(b)(1)-(2).

Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.<sup>7</sup>

With his request for reconsideration, appellant submitted no new medical evidence. Therefore, he has failed to meet the subsection (iii) requirement of relevant and pertinent new evidence.<sup>8</sup> Appellant has not advanced any relevant legal argument not previously considered by the Office. Inasmuch as appellant failed to meet any of the three requirements for reopening his claim for merit review, the Office properly denied his reconsideration request.

The November 21, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
February 20, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> 20 C.F.R. § 10.608(b).

<sup>8</sup> See *Eugene L. Turchin*, 48 ECAB 391, 397 (1997) (finding that appellant's failure to submit new and relevant evidence on reconsideration justified the Office's refusal to reopen his case for merit review).