

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOEY F. HERRERA and DEPARTMENT OF THE AIR FORCE,
HILL AIR FORCE BASE, Utah

*Docket No. 96-1973; Submitted on the Record;
Issued July 27, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The only decision before the Board on this appeal is the Office's April 22, 1996 decision denying appellant's application for a review on the merits of its March 13, 1995 decision.¹ Because more than one year has elapsed between the issuance of the Office's March 13, 1995 merit decision and June 5, 1996, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the March 13, 1995 decision.²

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ 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.⁴ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.⁵ When a claimant fails to meet one of the above-

¹ By decision dated March 13, 1995, the Office denied appellant's claim for a recurrence of disability, causally related to his September 25, 1989 right eyebrow contusion employment injury.

² See 20 C.F.R. § 501.3(d)(2).

³ 5 U.S.C. §§ 8101-8193.

⁴ 20 C.F.R. § 10.138(b)(1), 10.138(b)(2).

⁵ 20 C.F.R. § 10.138(b)(2).

mentioned standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁶

By letter dated March 13, 1996, appellant requested reconsideration of the Office's March 13, 1995 decision rejecting his recurrence claim. In support of the request appellant stated that he was attaching pertinent information from his physician which established that the claimed medical condition was causally related to the accepted injury. However, nothing was attached.

Consequently, appellant has not established that the Office abused its discretion in its April 22, 1996 decision by denying his request for a review on the merits of its March 13, 1995 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, failed to advanced a point of law or a fact not previously considered by the Office or failed to submitted relevant and pertinent evidence not previously considered by the Office.

As the only limitation on the Office's authority is reasonableness, an abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.⁷ Appellant has made no such showing here.

Consequently, the decision of the Office of Workers' Compensation Programs dated April 22, 1996 is hereby affirmed.

Dated, Washington, D.C.
July 27, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁶ *Joseph W. Baxter*, 36 ECAB 228 (1984).

⁷ *Daniel J. Perea*, 42 ECAB 214 (1990).