

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY SCOTT and DEPARTMENT OF AGRICULTURE,
AGRICULTURAL STABILIZATION & CONSERVATION SERVICE,
Raleigh, N.C.

*Docket No. 96-1136; Submitted on the Record;
Issued June 8, 1998*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128.

The only Office decision before the Board on this appeal is the Office's November 22, 1995 decision finding that appellant's application for review was not sufficient to warrant review of its prior decision. Since more than one year elapsed between the date of the Office's most recent merit decision on August 29, 1994 and the filing of appellant's appeal on February 29, 1996, the Board lacks jurisdiction to review the merits of appellant's claim.¹

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:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

‘(1) end, decrease, or increase the compensation awarded; or

‘(2) award compensation previously refused or discontinued.’”

Under 20 C.F.R. §10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and

pertinent evidence not previously considered by the Office. 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

¹ 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed.

claim. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.²

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128.

An Office hearing representative, by an August 29, 1994 decision, found that the evidence did not establish that appellant's vision loss was causally related to his employment, and that the medical evidence did not support that appellant's diabetes and pancreatitis after April 20, 1993 were causally related to factors of his employment.

In support of his August 27, 1995 request for reconsideration, appellant submitted copies of documents from proceedings before the U.S. District Court and the Merits Systems Protection Board brought by other former district directors at the employing establishment, alleging discrimination on the basis of age and political affiliation. Appellant also submitted newspaper articles concerning a probe of political fund-raising at the Department of Agriculture, a copy of a January 13, 1978 U.S. Court of Appeals order enjoining the employing establishment from transferring its district directors, including appellant, a May 17, 1994 employing establishment memorandum restricting district director travel, and a copy of appellant's complaint against the employing establishment of employment discrimination for its failure to accommodate his disability.

The Office's hearing representative's August 29, 1994 decision turned on the medical evidence on the question of whether the aggravation of appellant's pancreatitis and diabetes continued after he stopped work on April 20, 1993. Because the material appellant submitted with his August 27, 1995 request for reconsideration does not address this medical question, it is not relevant and does not require a reopening of the case to further address its merits.

The decision of the Office of Workers' Compensation Programs dated November 22, 1995 is affirmed.

Dated, Washington, D.C.
June 8, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

² *Edward Matthew Diekemper*, 31 ECAB 224 (1979).