

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of ARTURO B. ABENIR and U.S. POSTAL SERVICE,
POST OFFICE, Norfolk, Va.

*Docket No. 97-207; Submitted on the Record;
Issued October 21, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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 Office did not abuse its discretion.

On January 31, 1994 appellant, then a 61-year-old supervisor of maintenance operations, filed an occupational disease claim, alleging that he suffered from employment-related stress due to harassment. The Office developed the case and, by decision dated September 30, 1994, denied the claim on the grounds that fact of injury had not been demonstrated. Following appellant's request, a hearing was held on June 8, 1995. In a decision dated August 10, 1995 and finalized August 11, 1995, an Office hearing representative affirmed the prior decision, finding that appellant failed to establish a compensable factor of employment. On September 13, 1995 appellant requested reconsideration and submitted additional medical evidence.¹ In a letter decision dated July 5, 1996, the Office denied appellant's request on the grounds that he neither raised substantive legal questions nor included new and relevant evidence. The instant appeal follows.

The only decision before the Board in this appeal is the Office's decision dated July 5, 1996 denying appellant's application for review. Since more than one year had elapsed between the date of the Office's most recent merit decision finalized on August 11, 1995 and the filing of

¹ Appellant initially filed an application for review with the Board on September 1, 1995 and was assigned Docket No. 95-2951. In an order dated March 12, 1996, the Board dismissed this appeal as appellant had informed the Board that he was seeking reconsideration with the Office.

appellant's appeal on September 26, 1996, the Board lacks jurisdiction to review the merits of appellant's claim.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 When a claimant fails to meet one of the above 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.⁵ To be entitled to merit review of an Office decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.⁶

In this case, appellant did not show that the Office erroneously applied or interpreted a point of law and did not advance a point of law or fact not previously considered by the Office. In support of his request, appellant submitted additional medical evidence with his request for reconsideration. This evidence is, however, irrelevant to the issue in question, *i.e.*, whether appellant established a compensable factor of employment. Consequently, as appellant did not submit relevant and pertinent evidence not previously considered by the Office, he did not meet the requirements set forth at 20 C.F.R. § 10.138.

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.⁷ Such was not the case here, and the Board finds that the Office properly denied appellant's application for reconsideration of his claim.

² 20 C.F.R. § 501.3(d)(2).

³ 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 his own motion or on application." 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.138(b)(1) and (2).

⁵ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The decision of the Office of Workers' Compensation Programs dated July 5, 1996 is hereby affirmed.

Dated, Washington, D.C.
October 21, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member