

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GASTON A. MOORE and U.S. POSTAL SERVICE,  
POST OFFICE, Mohave, CA

*Docket No. 98-2084; Submitted on the Record;  
Issued February 18, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On September 29, 1995 appellant, then a 31-year-old clerk, filed an occupational disease claim alleging that he sustained stress and anxiety due to factors of his federal employment. Appellant related that he worked undercover with investigators for the employing establishment beginning in February 1995. He stated that the employing establishment did not relocate him after the conclusion of the investigation as promised and that he feared for his safety in his current location. Appellant stopped work on August 25, 1995 and did not return.

In a statement dated November 8, 1995, appellant related that he worked for the inspection division of the employing establishment. He stated:

“Our goal was to gather evidence and to implicate certain personnel for dealing narcotics on [employing establishment] property. I was told by the Inspectors that I would be transferred to another office within the [employing establishment] with the same job and full-time employee status before the implicated parties would be arrested...”

Appellant related that the employing establishment offered him a part-time position which he could not accept because of financial considerations and discussed his fear for his safety as a result of participating in the investigation.

By decision dated November 16, 1995, the Office denied appellant's claim on the grounds that he did not establish that he sustained an injury in the performance of duty.

In a letter dated November 10, 1996, appellant requested reconsideration of his claim. In support of his request appellant submitted a November 16, 1996 affidavit from a coworker who

stated that the son of a woman arrested as a result of the investigation stated that appellant would “be taken care of.”

In a letter dated December 3, 1996, the Office requested that appellant submit a rationalized medical report from his physician discussing how factors of his federal employment caused or contributed to his condition. The Office provided appellant 15 days within which to submit the requested information.

Appellant did not respond within the time allotted.

By letter dated December 27, 1996, an official with the employing establishment indicated that appellant had been offered a transfer to a permanent position but did not accept the offer.

By decision dated January 21, 1997, the Office modified its prior decision to reflect that appellant had established some incidents occurred as alleged but denied his claim on the grounds that he did not submit any supporting medical evidence. In the accompanying statement of accepted facts, the Office noted that the employing establishment had offered appellant a permanent, full-time transfer to another position which he refused.

In a letter dated December 23, 1997, appellant requested reconsideration of the prior decision. He contended that the employing establishment offered him a transfer to a part-time rather than a full-time position. Appellant also submitted a letter dated July 28, 1995 from the employing establishment denying his request for a transfer.

In response to the Office’s request for clarification, an official with the employing establishment stated that appellant had been offered a transfer to a part-time flexible position. The official indicated that the employing establishment did not promise to transfer appellant to a permanent position following the investigation.

By decision dated March 26, 1998, the Office denied appellant’s request for reconsideration on the grounds that the evidence was insufficient to warrant review of its prior decision. The Office found that appellant had “submitted no medical evidence establishing that a medical condition exists for which compensation is claimed.”

The Board finds that the Office properly denied appellant’s request for reconsideration under 5 U.S.C. § 8128.

The only decision over which the Board has jurisdiction is the Office’s March 26, 1998 decision denying appellant’s request for a review of the merits of the case. Because more than one year has elapsed between the issuance of the Office’s decision dated January 21, 1997 and June 15, 1998, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the decision dated January 21, 1997.<sup>1</sup>

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<sup>1</sup> See 20 C.F.R. §§ 501.2(c), 501.3(d).

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by written request to the Office identifying the decision and the specific issue(s) within the decision which claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

“(i) Showing that the Office erroneously applied or interpreted a point of law, or

“(ii) Advancing a point of law or fact not previously considered by the Office, or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”<sup>2</sup>

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.<sup>3</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary values and does not constitute a basis for reopening a case.<sup>4</sup> Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.<sup>5</sup>

In the present case, the Office denied appellant's claim for an emotional condition on the grounds that he did not submit any medical evidence in support of his claim. Appellant's letter dated December 23, 1997 requesting reconsideration is not sufficient to require merit review as the argument contained in the letter does not directly relate to the pertinent issue of whether he has any medical condition for which he claims compensation. The letter from the employing establishment dated July 28, 1995 denying appellant's request for a transfer is also insufficient to warrant a reopening of the case for review of the merits. As the current issue is medical in nature, it must be resolved by the submission of relevant medical evidence. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>6</sup>

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 known facts.<sup>7</sup> Appellant has made no such showing here and thus the Board finds that the Office properly denied his application for reconsideration of his claim.

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<sup>2</sup> 20 C.F.R. § 10.138(b)(1).

<sup>3</sup> See 20 C.F.R. § 10.138(b)(2).

<sup>4</sup> *Daniel Deparini*, 44 ECAB 657 (1993).

<sup>5</sup> *Id.*

<sup>6</sup> *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

<sup>7</sup> *Rebel L. Cantrell*, 44 ECAB 660 (1993).

The decision of the Office of Workers' Compensation Programs dated March 26, 1998 is hereby affirmed.

Dated, Washington, D.C.  
February 18, 2000

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member