

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY J. STEWART and DEPARTMENT OF TRANSPORTATION,
FLIGHT STANDARDS SERVICE, Washington, DC

*Docket No. 98-2324; Submitted on the Record;
Issued February 17, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

The present case was before the Board on a prior occasion. To briefly summarize the facts in this case, appellant, a 42-year-old management analyst, filed a claim for benefits on April 17, 1995, claiming that she injured her left arm and lower back on April 14, 1995.

By decision dated December 26, 1995, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that she sustained the claimed injuries in the performance of duty. By decision dated February 17, 1998, the Board affirmed the Office's December 26, 1995 decision denying compensation.

By letter dated March 16, 1998, appellant requested reconsideration of the Office's December 26, 1995 decision.

By decision dated June 1, 1998, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The only decision before the Board on this appeal is the June 1, 1998 Office decision which found that the letter submitted in support of appellant's request for reconsideration was insufficient to warrant review of its prior decision. Since the June 1, 1998 decision is the only decision issued within one year of the date that appellant filed her appeal with the Board, July 13, 1998, this is the only decision over which the Board has jurisdiction.¹

¹ See 20 C.F.R. § 501.3(d)(2).

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

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.² 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 claim.³ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁴

In the present case, appellant has not shown that the Office erroneously applied or interpreted a point of law and has not advanced a point of law or fact not previously considered by the Office. In addition, appellant failed to submit any new and relevant medical evidence in support of her request for reconsideration. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

The June 1, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
February 17, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

² 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.138(b)(2).

⁴ *Howard A. Williams*, 45 ECAB 853 (1994).