

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WANDA D. LITTLEJOHN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS AFFAIRS MEDICAL CENTER, Dallas, TX

*Docket No. 00-1723; Submitted on the Record;
Issued April 3, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

On October 24, 1995 appellant, then a 35-year-old registered nurse, filed an occupational disease claim alleging that she sustained persistent cervical syndrome and a bulging disc at C4-7 causally related to factors of her federal employment. The Office assigned the case File No. A16-0269440.

By decision dated January 10, 1996, the Office denied appellant's claim as untimely. In a decision dated November 14, 1996 and finalized November 15, 1996, a hearing representative reversed the Office's January 10, 1996 decision and remanded the case for the Office to consider whether appellant sustained a neck condition due to her employment duties.

In a decision dated February 5, 1997, the Office denied appellant's claim on the grounds that the evidence failed to establish that her claimed condition was causally related to her employment. By decision dated March 2, 1998, a hearing representative affirmed the Office's February 5, 1997 decision. Appellant, through her representative, requested reconsideration, which the Office denied in a merit decision dated March 3, 1999.

By letter dated February 25, 2000, appellant requested reconsideration of her claim assigned File No. A16-0269440. By decision dated March 13, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and thus insufficient to warrant modification of the prior decision. The Office noted that appellant had submitted medical evidence relevant to her claim for an injury on February 7, 1997, assigned File No. A16-029448.

The Board finds that the Office did not abuse its discretion in denying review of the merits of appellant's claim under section 8128.

The only decision over which the Board has jurisdiction is the Office's March 13, 2000 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 March 3, 1999 and April 20, 2000, the date appellant filed her appeal before the Board, the Board lacks jurisdiction to review the decision dated March 3, 1999.¹

Section 10.606 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.² Section 10.608 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

In support of her request for reconsideration, appellant submitted a report dated February 15, 2000 from Dr. Ronnie D. Shade, a Board-certified orthopedic surgeon, who related that he initially evaluated appellant on October 27, 1999 for "neck and left shoulder and arm pain as a result of a work[-]related injury that she had sustained on October 24, 1995. [Appellant] states that she also sustained a second injury while at work on February 7, 1997." Dr. Shade noted that appellant described a "longitudinal traction injury" in February 1997. He further noted that appellant underwent surgery in April 1997. He related:

"It is my strong opinion that the injury [] which she described and also with the preexisting diagnoses was directly causally related to the injury which she sustained on February 7, 1997. It is also my opinion that the injury [] which she sustained aggravated and exacerbated [her] underlying condition. It was also felt by me that the biomechanical effects of longitudinal traction on an upper extremity and the subsequent lateral bending moments and also flexion extension injury of the cervical spine was directly causally attributable to the injury which she sustained on February 7, 1997."

Dr. Shade did not discuss the pertinent issue of whether appellant sustained an occupational disease causally related to factors of her federal employment. Instead, Dr. Shade attributed appellant's current condition to an injury on February 7, 1997. As discussed above, evidence which does not address the particular issue involved is not new and relevant and thus does not constitute a basis for reopening a case.⁴

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

¹ See 20 C.F.R. §§ 501.2(c); 501.3(d).

² 20 C.F.R. § 10.606(b)(2).

³ 20 C.F.R. § 10.608(b).

⁴ See *Dominic E. Coppo*, 44 ECAB 484 (1993).

probable deductions from known facts.⁵ Appellant has made no such showing here and thus the Board finds that the Office properly denied her application for reconsideration of her claim.⁶

The decision of the Office of Workers' Compensation Programs dated March 13, 2000 is hereby affirmed.

Dated, Washington, DC
April 3, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

⁵ *Rebel L. Cantrell*, 44 ECAB 660 (1993).

⁶ On appeal, appellant acknowledged that she put the wrong Office file number on her February 25, 2000 reconsideration request and submitted new evidence relevant to her occupational disease claim. However, the Board's jurisdiction on appeal is limited to a review of the evidence, which was in the case record before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). Therefore, the Board is unable to review this evidence for the first time on appeal. Appellant may request reconsideration of her claim by submitting a written request to the Office, together with new evidence or argument, pursuant to 5 U.S.C. § 8128(a).