

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARVIN BROOKS and U.S. POSTAL SERVICE,
SOUTH JACKSONVILLE STATION, Jacksonville, FL

*Docket No. 00-1999; Submitted on the Record;
Issued April 27, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for review of the merits pursuant to 5 U.S.C. § 8128.

The Board has duly reviewed the case record and finds that the Office did not abuse its discretion by refusing to reopen appellant's case for review of the merits pursuant to 5 U.S.C. § 8128.

On July 19, 1998 appellant, then a 44-year-old distribution clerk, filed a claim for an occupational disease (Form CA-2), assigned number 06-707791, alleging that he first realized that his emotional condition was caused by factors of his employment on February 24, 1997. Appellant alleged that the employing establishment disregarded medical information and required him to perform duties outside his limitations. He also alleged that the employing establishment was harassing him.

By decision dated February 6, 1999, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty. In a March 20, 1999 letter, appellant requested reconsideration of the Office's decision.

By decision dated April 12, 1999, the Office denied appellant's request for reconsideration, without a review of the merits on the grounds that appellant failed to submit new and relevant evidence. In a February 7, 2000 letter, appellant, through his counsel, requested reconsideration of the Office's decision accompanied by factual and medical evidence.

In a decision dated February 29, 2000, the Office denied appellant's request for reconsideration, without a review of the merits, on the grounds that the evidence submitted was of a repetitious, immaterial or irrelevant nature.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed his request for appeal on May 24, 2000, the only decision before the Board is the February 29, 2000 decision, denying appellant's request for reconsideration on the merits.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 specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.⁴ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁵ 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.⁶

In support of his request for reconsideration, appellant submitted correspondence regarding his emotional condition, a grievance he filed against the employing establishment, an investigation of working conditions at the employing establishment, a letter of warning he received from the employing establishment and his narrative statement alleging harassment by the employing establishment. Appellant also submitted medical reports regarding his emotional and neck conditions. The factual and medical evidence submitted by appellant was previously of record. The Board has held that evidence, which repeats or duplicates evidence already in the record, has no evidentiary value and constitutes no basis for reopening a case.⁷ Therefore, the correspondence and reports submitted by appellant failed to satisfy appellant's burden.

In further support of his request, appellant submitted correspondence between the employing establishment and the Office in response to his request for a review of the written record, which was relevant to his previous claim for an injury sustained on May 25, 1995, that the Office assigned claim number 06-0628527 and accepted for permanent aggravation of degenerative disc disease. Appellant also submitted correspondence between himself and the employing establishment concerning a job offer subsequent to his May 25, 1995 employment injury. He maintains that this evidence establishes that he had a preexisting employment injury

¹ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² Because more than one year has elapsed between the issuance of the Office's February 6, 1999 merit decision and May 24, 2000, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the February 6, 1999 decision. *See* 20 C.F.R. § 501.3(d)(2).

³ 5 U.S.C. §§ 8101-8193. 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 her own motion or on application." 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(1)-(2).

⁵ *Id.* at § 10.607(a).

⁶ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁷ *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

and that the employing establishment disregarded his physical limitations due to this injury and harassed him. However, the Office previously considered and found that the record contained no evidence which would establish that the employing establishment, in fact, disregarded appellant's limitations and harassed appellant.

The picture of the workstation and correspondence between the employing establishment and the Office concerning a report, which were submitted by appellant are not relevant to the issue in this case whether appellant sustained an emotional condition in the performance of duty.

Finally, appellant submitted medical reports regarding his neck and emotional conditions. These reports, however, are not relevant because appellant did not establish any compensable factors of employment and, therefore, they do not contain medical rationale addressing how appellant's emotional condition resulted from factors of his federal employment.⁸

Because appellant has failed to submit any new relevant and pertinent evidence not previously reviewed by the Office and further failed to raise any substantive legal questions, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

The February 29, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 27, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁸ See *June A. Mesarick*, 41 ECAB 898, 908 (1990); *Sharon R. Bowman*, 45 ECAB 187, 195 (1993).