

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LESTER G. FLORENCE and U.S. POSTAL SERVICE,
POST OFFICE, Greensboro, NC

*Docket No. 99-936; Submitted on the Record;
Issued January 25, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

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

This is the third time this case has been on appeal. In a March 27, 1995 decision, the Board found that the Office properly terminated appellant's compensation effective August 6, 1990 on the grounds that residuals of his February 27, 1990 employment injury, right wrist instability, did not prevent him from performing the duties of the limited-duty position to which he returned.¹ Appellant worked in this capacity until October 9, 1996, when he was terminated for cause by the employing establishment.

Following issuance of the Board's decision, appellant filed a Form CA-7 dated January 10, 1997, claiming compensation from October 9, 1996 onwards. By decision dated April 7, 1997, the Office denied the claim on the grounds that there was no causal relation between the claimed injury and period of disability and the employment injury of February 27, 1990. In a decision dated October 29, 1997, an Office hearing representative affirmed the April 7, 1997 decision finding that appellant had not submitted medical evidence which established that his accepted condition had materially worsened, thereby preventing him from performing light-duty work.

By letter dated October 22, 1998, appellant requested reconsideration. Appellant submitted a July 10, 1997 preliminary report from Dr. James Crowther, who provided examination and x-ray results and diagnosed persistently painful right wrist carpal instability.

¹ A complete procedural history is set forth in the Board's March 27, 1995 decision. Docket No. 93-2157 (issued March 27, 1995).

By decision dated December 8, 1998, the Office denied appellant's request for reconsideration, finding that Dr. Crowther's report was in the record prior to the Office's October 29, 1997 decision, was thus repetitious of evidence previously of record and, therefore, insufficient to warrant merit review.

The Board finds that the Office acted within its discretion in refusing to reopen appellant's case for further consideration of the merits of his claim.

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.² As appellant filed his appeal with the Board on January 16, 1999, the date of postmark, the only decision properly before the Board is the December 8, 1998 denial of merit review.

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 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 reconsideration request, appellant submitted a copy of a July 10, 1997 report from Dr. Crowther. As the Office properly noted, this report was before the Office at the time of the last merit decision on October 29, 1997. In that decision, the Office specifically found that appellant had not submitted evidence which established that his accepted condition had materially worsened, thereby preventing him from performing limited-duty work. Dr. Crowther's July 10, 1997 report is insufficient to address the relevant issue of whether appellant's accepted condition has materially worsened. Inasmuch as appellant did not satisfy any of the criteria of section 10.138(b)(1) requiring a merit review of his claim, the Office properly denied merit review.

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

² 20 C.F.R. §§ 501.2(c), 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 his own motion or on application." 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

⁵ 20 C.F.R. § 10.138(b)(2).

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

actions taken which are contrary to both logic and probable deductions from known facts.⁷ The Board finds no evidence in the record of any such abuse of discretion.

Accordingly, appellant did not provide a sufficient evidentiary basis for reopening his claim and the Office properly employed its discretion in refusing to reopen the case for further review on the merits.⁸

The December 8, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 25, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

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

⁸ *Jimmy O. Gilmore*, 37 ECAB 257, 262 (1985).