

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DESSIE YOH-ELSTON and U.S. POSTAL SERVICE, DELPHOS
POST OFFICE, Delphos, OH

*Docket No. 00-480; Submitted on the Record;
Issued December 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

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

This is the second time this case has been before the Board on appeal.¹ On the previous appeal, the issue was whether the Office met its burden of proof in terminating appellant's compensation effective February 5, 1994. In a decision dated August 24, 1998, the Board found that the Office met its burden of proof in terminating appellant's compensation. The facts of the case are set out in that decision.

In a July 27, 1999 letter, appellant, through her counsel, requested that the Office reconsider the Board's decision.

By decision dated August 27, 1999, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that appellant failed to submit relevant evidence or present legal contentions not previously considered.

The Board has duly reviewed the case record in this appeal and finds that the Office acted within its discretion in refusing to reopen appellant's claim for further review of the merits under 5 U.S.C. § 8128(a).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² 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

¹ Docket No. 96-2426 (issued August 24, 1998).

² 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).

relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.³ 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.⁴ 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.⁵

In this case, appellant merely stated in a July 27, 1999 letter that “[t]his request for reconsideration is being made within one year of the date of the previous decision in this matter. The prior decision was legally and factually incorrect.” Appellant did not submit any relevant and pertinent new evidence not previously considered by the Office to support her contention. The issue, whether the Office met its burden of proof in terminating appellant’s compensation benefits effective February 5, 1994, is medical in nature and must be addressed by a physician. However, appellant did not submit any new medical evidence with her request for reconsideration.

Inasmuch as appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a point of law or fact not previously considered by the Office or to submit relevant and pertinent evidence not previously considered by the Office, the Office properly refused to reopen appellant’s claim for a review on the merits.

The August 27, 1999 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 7, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

³ 20 C.F.R. § 10.606(b)(1)-(2).

⁴ *Id.* at § 10.607(a).

⁵ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).