

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of TERESA A. KNOX and U.S. POSTAL SERVICE,  
POST OFFICE, Baltimore, MD

*Docket No. 99-850; Submitted on the Record;  
Issued December 1, 2000*

---

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

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

In June 1989 appellant, then a 31-year-old flat sorter operator, filed a claim alleging that she sustained an employment-related respiratory condition. The Office accepted that appellant sustained allergic bronchitis and paid compensation for periods of partial and total disability. In 1994 appellant began to participate in vocational rehabilitation efforts which included taking courses at a community college. By decision dated July 25, 1997, the Office reduced appellant's compensation effective August 17, 1997 after finding that she was medically and vocationally capable of performing the constructed position of receptionist.

By decision dated October 7, 1997, the Office denied appellant's request for merit review and, by decision dated January 26, 1998, the Office denied appellant's hearing request on the grounds that she had already requested reconsideration.<sup>1</sup> Appellant again requested reconsideration of her claim in a July 14, 1998 letter and, by decision dated October 28, 1998, the Office denied appellant's request for merit review.<sup>2</sup>

The only decision before the Board on this appeal is the Office's October 28, 1998 decision denying appellant's request for a review on the merits of its July 25, 1997 decision.

---

<sup>1</sup> Appellant has not requested an appeal to the Board of the hearing denial and the matter is not currently before the Board.

<sup>2</sup> In April 1998 appellant had filed an appeal to the Board, but the Board later dismissed the appeal upon appellant's request.

Because more than one year has elapsed between the issuance of the Office's July 25, 1997 decision and November 24, 1998, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the July 25, 1997 decision.<sup>3</sup>

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>4</sup> 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.<sup>5</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file her application for review within one year of the date of that decision.<sup>6</sup> 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.<sup>7</sup>

In support of her reconsideration request, appellant argued that she did not complete enough college courses to prepare her to work as a receptionist. However, the Office had already considered and rejected this argument. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>8</sup>

Appellant also submitted numerous documents, including copies of prior decisions, descriptions of the receptionist position, and records of college classes she had taken. However, the record had already contained copies of the same or similar documents.

Appellant also submitted a February 27, 1998 report in which Dr. Alkis Togias, an attending Board-certified internist, detailed her respiratory condition. Dr. Togias did not indicate that appellant could not perform the receptionist position and therefore his report is not relevant to the issue in this case. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>9</sup>

Therefore appellant has not established that the Office abused its discretion in its October 28, 1998 decision by denying her request for a review on the merits because she has not shown that the Office erroneously applied or interpreted a point of law, advanced a point of law

---

<sup>3</sup> See 20 C.F.R. § 501.3(d)(2).

<sup>4</sup> 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).

<sup>5</sup> 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

<sup>6</sup> 20 C.F.R. § 10.138(b)(2).

<sup>7</sup> *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

<sup>8</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>9</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

or a fact not previously considered by the Office or submitted relevant and pertinent evidence not previously considered by the Office.

The decision of the Office of Workers' Compensation Programs dated October 28, 1998 is affirmed.

Dated, Washington, DC  
December 1, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member