U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELAINE D. GAUCK and U.S. POSTAL SERVICE,
POST OFFICE, Hauppauge, N.Y.

Docket No. 96-1336; Submitted on the Record;
Issued August 13, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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 has duly reviewed the case record in the present appeal and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The only decision before the Board on this appeal is the Office's February 5, 1996 nonmerit decision denying appellant's application for a review on the merits of its December 21, 1994 decision.[1] Because more than one year has elapsed between the issuance of the Office's December 21, 1994 merit decision and March 5, 1996, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the December 21, 1994 decision and any preceding decisions.[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 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

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[1] By decision dated December 21, 1994, the Office denied modification of a September 27, 1993 hearing representative's decision which affirmed the October 30, 1992 denial of appellant's claim.

[2] *See* 20 C.F.R. § 501.3(d)(2).

[3] 5 U.S.C. §§ 8101-8193.

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

decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.[5] When a claimant fails to meet one of the above-mentioned 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]

By letter dated December 11, 1995, appellant requested reconsideration of the Office's December 21, 1994 prior decision denying modification of its September 27, 1993 decision affirming the October 30, 1992 denial of appellant's claim. In support of the request, appellant submitted a six-page letter reiterating arguments previously made and considered by the Office and the Branch of Hearings and Review. Also submitted was a December 5, 1995 medical report from Dr. Martin A. Lehman which duplicated verbatim the contents of a December 6, 1994 report which had been previously considered by the Office. The Office found and the Board now confirms that this December 11, 1995 letter is cumulative and substantially similar to material previously of record which had already been considered by the Office, and the December 5, 1995 medical report merely repeated the contents of the previously considered December 6, 1994 report. The Board has found that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[7] Consequently, appellant has not presented relevant and pertinent evidence not previously considered by the Office, sufficient to require that the Office reopen her case for a reconsideration of its merits.

In the present case, appellant has not established that the Office abused its discretion in its February 5, 1996 decision by denying her request for a review on the merits of its December 21, 1994 decision under section 8128(a) of the Act, because she has failed to show that the Office erroneously applied or interpreted a point of law, failed to advanced a point of law or a fact not previously considered by the Office or failed to submitted relevant and pertinent evidence not previously considered by the Office.

As the only limitation on the Office's authority is reasonableness, 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 probable deductions from known facts.[8]

Appellant has made no such showing here.

[5] 20 C.F.R. § 10.138(b)(2).

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

[7] *Jerome Ginsberg*, 32 ECAB 31 (1980).

[8] *Rebel L. Cantrell*, 44 ECAB 660 (1993); *Billy G. Reeder*, 44 ECAB 578 (1993); *Patsy R. Tatum*, 44 ECAB 490 (1993); *Wilson L. Clow*, 44 ECAB 157 (1992); *Daniel J. Perea*, 42 ECAB 214 (1990).

Accordingly, the decision of the Office of Workers' Compensation Programs dated February 5, 1996 is hereby affirmed.

Dated, Washington, D.C.
August 13, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member