

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KYUNG S. CHAE and U.S. POSTAL SERVICE,
POST OFFICE, Jersey City, N.J.

*Docket No. 97-839; Submitted on the Record;
Issued December 21, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for review of the case on its merits under 5 U.S.C. § 8128.

On July 5, 1995 appellant filed a claim for employment-related hearing loss. By decision dated December 19, 1995, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained hearing loss causally related to factors of her federal employment. The Office based its decision on the opinion of Dr. Stephen Frefield, a Board-certified otolaryngologist and Office referral physician, who in a report dated October 30, 1995, opined that appellant had minimal sensorineural hearing loss in her right ear unrelated to her occupation. On October 16, 1996 appellant, through her representative, requested reconsideration. By decision dated October 28, 1996, the Office denied review of its prior decision on the grounds that the evidence submitted was immaterial to the case.

The Board finds that the Office properly denied appellant's request for reconsideration of its decision under section 8128.

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and the specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

“(i) Showing that the Office erroneously applied or interpreted a point of law, or

“(ii) Advancing a point of law or fact not previously considered by the Office, or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”¹

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.² Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.³ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁴

In the present case, the Office denied appellant’s claim for employment-related hearing loss based on the weight of the medical evidence. In support of her request for reconsideration, appellant submitted a statement from a union steward describing the loud noise levels where appellant worked. However, as discussed above, evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁵ The issue of whether appellant sustained a loss of hearing causally related to her federal employment is a medical question which can only be resolved by the submission of medical evidence.⁶

As appellant has not established that the Office erroneously applied or interpreted a point of law, advanced a point of law or fact not previously considered by the Office or submitted relevant and pertinent evidence not previously considered by the Office, she has not established that the Office abused its discretion in denying her request for review under section 8128 of the Act.

¹ 20 C.F.R. § 10.138(b)(1).

² See 20 C.F.R. § 10.138(b)(2).

³ *Daniel Deparini*, 44 ECAB 657 (1993).

⁴ *Id.*

⁵ See *Dominic E. Coppo*, 44 ECAB 484 (1993); 20 C.F.R. § 10.138(b)(1)(iii).

⁶ *Ronald M. Cokes*, 46 ECAB 967 (1995).

The decision of the Office of Workers' Compensation Programs dated October 28, 1996 is hereby affirmed.

Dated, Washington, D.C.
December 21, 1998

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member