

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAWN M. MOORE and U.S. POSTAL SERVICE,
SORRENTO VALLEY STATION, San Diego, Calif.

*Docket No. 96-179; Submitted on the Record;
Issued January 13, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, 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 Office did not abuse its discretion in denying appellant's request for review.

On April 25, 1991 appellant, then a 34-year-old letter carrier, filed an occupational disease claim, alleging that she suffered from employment-related stress.¹ The Office developed the case, and by decision dated March 2, 1992, denied the claim on the grounds that appellant failed to establish fact of injury in the performance of duty. Appellant requested reconsideration on March 23, 1993 and, in an April 2, 1993 decision, the Office modified the previous decision, finding that appellant failed to establish performance of duty. By letter dated March 30, 1994, appellant's psychologist requested reconsideration and, in a May 6, 1994 decision, the Office reviewed the merits of the claim and found that the evidence submitted did not warrant modification of the prior decision. On May 5, 1995 appellant again requested reconsideration and provided a statement in which she contended that she had recovered repressed memories of the employment incidents that caused her stress. She then enumerated these events in chronological order. In a decision dated July 19, 1995, the Office denied her request for merit review, finding that her allegations regarding harassment and abuse perpetuated by her supervisor, Mr. Bob Carreon, were unsubstantiated, and that her other contentions were repetitive or irrelevant. The instant appeal follows.

¹ It is noted that the record contains a traumatic injury claim filed on May 7, 1991. The Office issued its most recent decision on the claim on October 21, 1992 and appellant filed the instant appeal with the Board on October 17, 1995. The claim filed May 7, 1991 is, therefore, not before the Board as 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed.

The only decision before the Board in this appeal is the Office's decision dated July 19, 1995 denying appellant's application for review. Since more than one year had elapsed between the date of the Office's most recent merit decision dated May 6, 1994 and the filing of appellant's appeal on October 17, 1995, the Board lacks jurisdiction to review the merits of appellant's claim.²

To require the Office to reopen a case for merit review under section 8128(a) of the 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 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 To be entitled to 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.⁶

In this case, appellant did not show that the Office erroneously applied or interpreted a point of law and did not advance a point of law or fact not previously considered by the Office. In support of her request, appellant did not submit relevant and pertinent evidence not previously considered by the Office. Rather, she submitted a written statement contending that the Office had erroneously interpreted Board precedent and discussed in detail incidents and events that were either irrelevant or were repetitive of evidence already of record. The Board finds, however, that the Office properly relied upon Board precedent in reaching its decision. Furthermore, neither evidence which repeats or duplicates evidence already in the case record⁷ nor evidence which does not address the relevant issue involved in the case constitutes a basis for reopening a claim.⁸ Mere perceptions or feelings do not constitute compensable factors of employment,⁹ and unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁰ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her

² 20 C.F.R. § 501.3(d)(2).

³ 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) and (2).

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

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ See *Richard L. Ballard*, 44 ECAB 146 (1992).

⁸ See *Ernest J. LeBreux*, 42 ECAB 736 (1991).

⁹ See *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

¹⁰ *Mary A. Sisneros*, 46 ECAB ____ (Docket No. 93-1074, issued October 26, 1994).

allegations with probative and reliable evidence,¹¹ and here appellant submitted no supporting documentation with her reconsideration request.

The Board has held that, 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 actions taken which are contrary to both logic and probable deduction from established facts.¹² Such was not the case here, and the Board finds that the Office properly denied appellant's application for reconsideration of his claim.

The decision of the Office of Workers' Compensation Programs dated July 19, 1995 is hereby affirmed.

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

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹¹ See *Donald E. Ewals*, 45 ECAB 111 (1993); *Anthony A. Zarcone*, 44 ECAB 751 (1993).

¹² See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).