

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWRENCE P. LABREW *and* U.S. POSTAL SERVICE,
PARK GROVE STATION, Detroit, Mich.

*Docket No. 96-1449; Submitted on the Record;
Issued July 10, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

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.

The only decisions before the Board in this appeal are the decisions dated September 18, 1995 and January 29, 1996 in which the Office denied appellant's application for review.¹ Since more than one year had elapsed between the date of the Office's most recent merit decision dated November 15, 1994 and the filing of appellant's appeal on April 10, 1996, 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 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 When a claimant fails to meet one of the

¹ On July 7, 1993 appellant, then a 36-year-old letter carrier, filed an occupational disease claim, alleging that employing establishment management constantly harassed him to be more productive and had made numerous attempts to fire him.

² 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.

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).

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

Appellant initially requested reconsideration by letter dated April 30, 1995 and submitted a copy of a January 5, 1995 arbitration decision in which a grievance filed by appellant was sustained.⁷ He also submitted two General Accounting Office booklets that discussed employing establishment labor-management problems and a February 1, 1994 employing establishment memorandum regarding a pre-arbitration settlement.

By decision dated September 18, 1995, the Office denied appellant's request, finding that the evidence submitted fell outside the period which formed the basis for the instant claim and was, therefore, irrelevant. On November 2, 1995 appellant again requested reconsideration, contending that the previous decision had been in error. In a January 29, 1996 decision, the Office denied appellant's request.

Initially, the Board notes that excerpts from publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.⁸ The February 1, 1994 memorandum was in the record before the Office hearing representative, and the grievance settlement is not relevant to the instant claim as it pertains to events that occurred subsequent to July 7, 1993, the date this claim was filed. 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.⁹ Such was not the case here, and the Board finds that the Office properly denied appellant's applications for reconsideration of his claim.

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

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ The grievance pertained to workplace events occurring on March 31 and April 1, 1994 and a subsequent notice of proposed removal. The Office noted that this would be considered a factor of employment but should be considered separately from the instant claim as the events occurred after July 7, 1993, the date appellant's claim was filed.

⁸ *See Dominic E. Coppo*, 44 ECAB 484 (1993).

⁹ *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The decisions of the Office of Workers' Compensation Programs dated January 29, 1996 and September 18, 1995 are hereby affirmed.

Dated, Washington, D.C.
July 10, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member