

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of THERESA M. VENEGAS and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, Calif.

*Docket No. 96-89; Submitted on the Record;
Issued October 2, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained disability due to her February 14, 1991 employment injury, mild chemical dermatitis of both hands; and (2) 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 given careful consideration to the issues involved, the contentions of appellant on appeal, and the entire case record. With respect to the merit issue of the present case, the Board finds that the decision of the hearing representative of the Office dated and finalized March 24, 1995 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

The Board further 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.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ 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.² To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.³ When a claimant fails to meet one of the above

¹ 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).

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

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.⁴

In support of her request for reconsideration of the Office's March 24, 1995 decision, appellant again argued that she was exposed to highly toxic chemicals at work on February 14, 1991, other than those which had been accepted by the Office, and that these chemicals worsened her diabetic condition and caused damage to her respiratory, gastrointestinal and reproductive systems. Appellant had previously presented similar arguments on numerous occasions and the Office had rejected these arguments.⁵ The Board has held that the submission of evidence or argument which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁶ Appellant also submitted copies of factual documents which had previously been submitted to the Office.

In the present case, appellant has not established that the Office abused its discretion in its July 6, 1995 decision by denying her request for a review on the merits of its March 24, 1995 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, that she advanced a point of law or a fact not previously considered by the Office or that she submitted relevant and pertinent evidence not previously considered by the Office.

³ 20 C.F.R. § 10.138(b)(2).

⁴ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁵ The Office had accepted that appellant was briefly exposed to waste water which contained low levels of chemicals commonly found in such water. The Office determined that the well-reasoned opinion of an impartial medical examiner showed that appellant did not sustain disability due to her February 14, 1991 employment injury, mild chemical dermatitis of both hands.

⁶ *Eugene F. Butler*, 36 ECAB 393 , 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

The decisions of the Office of Workers' Compensation Programs dated July 6 and March 24, 1995 are affirmed.

Dated, Washington, D.C.
October 2, 1998

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member