

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD C. WOOLSEY and DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, WHITE MOUNTAIN NATIONAL FOREST, Laconia, N.H.

*Docket No. 97-886; Submitted on the Record;
Issued October 26, 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 his 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 decision before the Board in this appeal is the decision dated January 18, 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 October 7, 1994 and the filing of appellant's appeal on December 12, 1996, the Board lacks jurisdiction to review the merits of appellant's claim.²

¹ On June 24, 1992 appellant, then a 51-year-old forestry technician, sustained employment-related Achilles tendinitis. He did not stop work. On August 31, 1992 he filed an occupational disease claim, alleging that employment factors caused an ongoing foot condition. By decision dated December 10, 1993, the Office denied the claim on the grounds that the medical evidence was insufficient to establish entitlement. Following appellant's request, a hearing was held on July 25, 1994 and, in an October 7, 1994 decision, an Office hearing representative affirmed the prior decision.

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.

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 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 must also file his or her application for review within one year of the date of that decision.⁶

Appellant requested reconsideration on October 4, 1995, contending that the employing establishment attempted to suppress his claim for compensation and that the Office ignored medical evidence. By decision dated January 18, 1996, the Office denied appellant's request, finding that appellant provided no relevant evidence to substantiate his charges and reiterating that the medical evidence of record was insufficient to establish his claim.

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.⁷ The record in this case indicates that the Office considered all the medical evidence of record and that appellant's claim was adjudicated in accordance with Office procedures. Merit review is not required where the legal contention presented does not have a reasonable color of validity.⁸ As appellant submitted no new evidence and did not articulate any legal argument with a reasonable color of validity in support of his request for reconsideration, the Board finds that the Office properly denied appellant's application for reconsideration of his claim.

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

⁸ *See Nora Favors*, 43 ECAB 403 (1992).

The decision of the Office of Workers' Compensation Programs dated January 18, 1996 is hereby affirmed.

Dated, Washington, D.C.
October 26, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member