

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RUTH D. SUKUL and DEPARTMENT OF THE TREASURY,  
FINANCIAL MANAGEMENT SERVICE, Washington, D.C.

*Docket No. 97-2216; Submitted on the Record;  
Issued June 18, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
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 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.

The only decision before the Board on this appeal is the Office's March 27, 1997 decision denying appellant's request for a review on the merits of its April 18, 1996 decision. By decision dated April 18, 1996, the Office affirmed its February 3, 1994 and March 15, 1995 decisions on the grounds that appellant did not submit sufficient medical evidence to show that she sustained a recurrence of disability on or after November 15, 1991 due to her employment injury, perennial rhinitis. Because more than one year has elapsed between the issuance of the Office's April 18, 1996 decision and June 18, 1997, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the April 18, 1996 decision.<sup>1</sup>

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>2</sup> 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.<sup>3</sup> To be entitled to a merit review of an Office

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<sup>1</sup> See 20 C.F.R. § 501.3(d)(2).

<sup>2</sup> 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).

<sup>3</sup> 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.<sup>4</sup> 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.<sup>5</sup>

In support of her reconsideration, appellant submitted a March 27, 1997 letter in which she asserted that her attending physicians indicated her rhinitis condition was permanent and that there was no evidence showing that her respiratory symptoms had cleared up in 1989. The submission of this argument, however, is not sufficient to require reopening of appellant's claim in that it is not relevant to the main issue of the present case, *i.e.*, whether appellant submitted adequate medical evidence to show that she sustained a recurrence of disability on or after November 15, 1991 due to her employment injury, perennial rhinitis. This issue is medical in nature and should be resolved by the submission of relevant medical evidence. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>6</sup>

In the present case, appellant has not established that the Office abused its discretion in its March 27, 1997 decision by denying her request for a review on the merits of its April 18, 1996 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.

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<sup>4</sup> 20 C.F.R. § 10.138(b)(2).

<sup>5</sup> *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

<sup>6</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decision of the Office of Workers' Compensation Programs dated March 27, 1997 is affirmed.

Dated, Washington, D.C.  
June 18, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Bradley T. Knott  
Alternate Member