

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA EILAND SUTTON and U.S. POSTAL SERVICE,
POST OFFICE, North Suburban, Ill.

*Docket No. 97-2306; Submitted on the Record;
Issued June 3, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
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 decision before the Board in this appeal is the Office's decision dated April 7, 1997 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 July 2, 1993 and the filing of appellant's appeal on July 3, 1997, the Board lacks jurisdiction to review the merits of appellant's claim.¹

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² 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.³ 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.⁴ To be entitled to a merit review of an

¹ 20 C.F.R. § 501.3(d)(2).

² 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).

³ 20 C.F.R. § 10.138(b)(1) and (2).

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

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.⁵

This is the second appeal to the Board in this case.⁶ By decision and order dated January 22, 1997, the Board affirmed a September 30, 1994 decision in which the Office denied appellant's request for reconsideration. The law and facts as set forth in the previous decision and order are incorporated herein by reference.

Subsequent to the January 22, 1997 Board decision, by letter dated February 21, 1997, appellant requested reconsideration and submitted additional evidence. By decision dated April 7, 1997, the Office denied appellant's request on the grounds that the request was untimely filed and that she failed to demonstrate clear evidence of error.⁷ The Office properly found appellant's request was not received within one year of the latest merit decision.

The Board notes that the evidence submitted by appellant was previously reviewed by both the Board and the Office. As such, the evidence does not raise a substantial question as to the correctness of the Office's decision or of sufficient probative value to *prima facie* shift the weight of evidence in favor of appellant.⁸ As appellant has failed to provide evidence to establish clear error, the Office properly refused to reopen her claim for further consideration on the merits of the claim.

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ Docket No. 95-876 (issued January 22, 1997). At the time this appeal was filed, appellant was known as Sandra Eiland.

⁷ The Board notes that appellant filed a duplicate appeal in this case that was assigned docket number 97-2685. This was dismissed by order dated June 23, 1998.

⁸ See *Henry B. Sutherland*, 47 ECAB 712 (1996).

The decision of the Office of Workers' Compensation Programs dated April 7, 1997 is hereby affirmed.

Dated, Washington, D.C.
June 3, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member