

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WALTER N. HARLOW and U.S. POSTAL SERVICE,
POST OFFICE, Fort Ransom, N.D.

*Docket No. 97-1853; Submitted on the Record;
Issued May 5, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, 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 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 Office's decision dated February 18, 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 May 11, 1995 and the filing of appellant's appeal on April 14, 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

¹ 20 C.F.R. § 501.3(d)(2). The Board notes that the record contains a request for review of the written record submitted on June 15, 1995.

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).

consideration under section 8128(a) of the Act.⁴ 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.⁵

Appellant, through his Congressman, requested reconsideration on May 13, 1996. He provided a lengthy statement contending, *inter alia*, that the employing establishment was involved in a conspiracy against him and that it had not followed proper procedures in requesting a psychiatric evaluation and in placing him on leave without pay. With his request, appellant submitted a number of statements, reports and previously submitted medical evidence. By decision dated February 18, 1997, the Office denied appellant's request, finding the evidence submitted repetitive, cumulative and irrelevant to the issue of establishing specific compensable work factors.

In this case, appellant did not show that the Office erroneously applied or interpreted a point of law and did not advance a point of law or fact not previously considered by the Office. A review of appropriate Federal regulations indicates that the employing establishment followed proper procedures in placing appellant in requesting a psychiatric evaluation and in placing him on leave without pay.⁶ The medical evidence submitted was previously of record, and the remaining statements and reports are irrelevant to the issue in question, *i.e.*, whether appellant established a compensable factor of employment. Consequently, as appellant did not submit relevant and pertinent evidence not previously considered by the Office, he did not meet the requirements set forth at 20 C.F.R. § 10.138.

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

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

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ 20 C.F.R. §§ 339.301, 752.404.

⁷ *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The decision of the Office of Workers' Compensation Programs dated February 18, 1997 is hereby affirmed.

Dated, Washington, D.C.
May 5, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member