

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HONG L. NGUYEN and U.S. POSTAL SERVICE,
POST OFFICE, Merrifield, VA

*Docket No. 99-2312; Submitted on the Record;
Issued October 17, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained an emotional or disabling medical condition on April 11, 1998 causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion by denying merit review of appellant's claim.

The Board has given careful consideration to the issues involved, the contentions on appeal and the entire case record. The Board finds that the February 16, 1999 decision of the Office hearing representative is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

The Board also finds that the Office properly denied further merit review. On March 30, 1999 appellant, through counsel, requested reconsideration and submitted additional evidence. In its decision dated June 25, 1999, the Office denied appellant's request, finding the evidence submitted irrelevant to the issue in this case and therefore insufficient to warrant merit review.

Under section 8128(a) of the Federal Employees' Compensation Act,¹ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,² which provides that a claimant may obtain review of the merits if her written

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.606(b) (1999).

application for reconsideration, including all supporting documents, sets forth arguments and contains evidence:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the OWCP.”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.³ If a claimant fails to submit relevant evidence not previously of record or advance legal contentions or facts not previously considered, the Office has the discretion to refuse to reopen a case for further consideration of the merits pursuant to section 8128.⁴

In the present case, appellant’s claim was denied on the basis that she had not substantiated a compensable factor of employment to establish an emotional condition arising from the events of April 11, 1998 or established that an injury was sustained in the performance of duty on April 11, 1998. The additional evidence appellant submitted with her request for reconsideration consists of evidence that does not address the issue in this case.⁵ The additional evidence was, therefore, properly found to be irrelevant and not sufficient to require reopening of appellant’s case for further review of the merits of her claim pursuant to section 8128.

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.⁶ The evidence submitted with appellant’s reconsideration request consists of medical reports and information regarding appellant’s claim that her condition and disability after April 11, 1998 are causally related to her November 15, 1996 injury. The Office hearing representative noted in his decision of February 16, 1999 that such a claim should be developed as a recurrence claim under File No. A25-497724, in which the Office had accepted appellant’s November 15, 1996 injury for the condition of concussion. In support of the application for review, appellant’s counsel indicated that the basis for reconsideration was to proceed with the Office hearing representative’s instructions. As the medical evidence submitted is not relevant and pertinent to the issue in this case, it therefore is

³ 20 C.F.R. § 10.608(b) (1999).

⁴ *John E. Watson*, 44 ECAB 612, 614 (1993).

⁵ The evidence submitted consists of medical reports and magnetic resonance imaging reports which relate that appellant had an undetected neck injury on November 15, 1996.

⁶ *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

insufficient to warrant modification.⁷ The Board finds that the Office properly denied appellant's application for reconsideration of her claim.

The decisions of the Office of Workers' Compensation Programs dated June 25 and February 16, 1999 are hereby affirmed.

Dated, Washington, DC
October 17, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ 20 C.F.R. § 8128(a)(3).