U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BETTIE A. BAPTISTE and U.S. POSTAL SERVICE,
DETROIT MANAGEMENT SECTION CENTER, Detroit, MI

*Docket No. 01-683; Submitted on the Record;*
*Issued May 10, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
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 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 December 20, 2000 decision denying appellant's request for a review on the merits of its November 19, 1999 decision. Because more than one year has elapsed between the issuance of the Office's November 19, 1999 decision and January 8, 2001, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the decision.[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] To be entitled to a 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.[4] When a claimant fails to meet one of the

[1] *See* 20 C.F.R. § 501.3(d)(2).

[2] 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).

[3] 20 C.F.R. §§ 10.606(b)(1).

[4] 20 C.F.R. § 10.607(a).

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]

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[6]

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.[7]

While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.[8]

In the present case, appellant has not established that the Office abused its discretion in its decision by denying his request for a review on the merits of its 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.

The November 19 and February 17, 1999 denials of appellant's recurrence claim were based on the insufficiency of the evidence. Specifically, the evidence appellant submitted did not establish, as of November 12, 1998, either that appellant's job duties or medical condition had changed so as to render appellant totally disabled.

In her November 20, 2000 request for reconsideration, appellant argued that the Office wrongly interpreted the medical evidence already in the record. She also submitted a November 7, 2000 medical report from Dr. William J. Arnold, a family practitioner. In part Dr. Arnold wrote "the patient is now medically able to carry out her limited duties of employment, as no lifting over 35 pounds, sitting for 4 to 6 hours per shift, standing for 15 minutes per up to 1 hour every shift as long as she is permitted to retain these restrictions, she can continue this job duty."

Neither Dr. Arnold's report nor appellant's arguments in her reconsideration request give cause for the Office to reopen the case for a merit review. The relevant issue is whether appellant was totally disabled on or after November 12, 1998. Dr. Arnold's report indicated that appellant is now medically capable of returning to her light-duty job but is not probative on her status of disability as of November 12, 1998. Furthermore, as appellant is not a physician, her arguments that the Office misinterpreted the medical reports lacks the reasonable color of validity.

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[5] 20 C.F.R. § 10.608.(b).

[6] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

[7] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[8] *John F. Critz*, 44 ECAB 788, 794 (1993).

The decision of the Office of Workers' Compensation Programs dated December 20, 2000 is affirmed.

Dated, Washington, DC
May 10, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member