

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MANUEL A. GUAITIAO and U.S. POSTAL SERVICE,
POST OFFICE, West Sacramento, Calif.

*Docket No. 97-541; Submitted on the Record;
Issued December 24, 1998*

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, in its November 20, 1995 and August 29, 1996 decisions, 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 finds that the refusal of the Office, in its November 20, 1995 and August 29, 1996 decisions, to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The only decisions before the Board on this appeal are the Office's November 20, 1995 and August 29, 1996 decisions denying appellant's request for a review on the merits of its August 21, 1995 decision. Because more than one year has elapsed between the issuance of the Office's August 21, 1995 decision and November 13, 1996, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the August 21, 1995 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

¹ See 20 C.F.R. § 501.3(d)(2). By decision dated August 21, 1995, the Office affirmed its January 12 and December 28, 1993 decisions on the grounds that appellant did not submit sufficient medical evidence to establish that he sustained a hip or shoulder condition in the performance of duty.

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. §§ 10.138(b)(1), 10.138(b)(2).

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 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

In support of his reconsideration requests, appellant submitted an undated letter received by the Office in November 1995 and a letter dated August 7, 1996. In these letters, appellant discussed his employment duties and maintained that his medical condition was due to employment factors. The Board notes, however, that these statements are similar to those already submitted and considered by the Office. 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 Appellant also resubmitted a June 30, 1995 report of an attending physician which had already been considered by the Office.

In the present case, appellant has not established that the Office abused its discretion in its November 20, 1995 and August 29, 1996 decisions by denying his request for a review on the merits of its August 21, 1995 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, that he advanced a point of law or a fact not previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office.

The decisions of the Office of Workers' Compensation Programs dated August 29, 1996 and November 20, 1995 are affirmed.

Dated, Washington, D.C.
December 24, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

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