

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD A. LEYDA and DEPARTMENT OF THE NAVY,
NAVAL AIR WARFARE CENTER, Lakehurst, N.J.

*Docket No. 97-860; Submitted on the Record;
Issued December 8, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

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 October 22, 1996 denying appellant's application for review. Since more than one year had elapsed between the date of the Office's most recent merit decision finalized on August 5, 1995 and the filing of appellant's appeal on December 19, 1996, 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 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

The facts in this case indicate that on June 3, 1995 appellant, then a 48-year-old aircraft mechanic, filed a claim, alleging that he injured his back in the performance of duty on May 19, 1995. He stopped work on May 30, 1995. The Office developed the case and, by decision dated August 2, 1995, denied the claim on the grounds that fact of injury had not been demonstrated. The Office found that the claimed event occurred at the time and place and in the manner alleged but that a medical condition resulting from the accepted incident was not supported by the medical evidence of record. On August 29, 1995 appellant requested reconsideration and submitted additional medical evidence. In a letter decision dated September 15, 1995, the Office denied appellant's request on the grounds that he neither raised substantive legal questions nor included new and relevant evidence. On July 26, 1996 appellant again requested reconsideration and submitted reports dated September 12, 1995 of myelography and computerized tomography (CT) scan of the lumbar spine. By decision dated October 22, 1996, the Office again denied appellant's request on the grounds that he neither raised substantive legal questions nor included new and relevant evidence. The instant appeal follows.

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 With his request for reconsideration appellant submitted reports of myelography and CT scan. While these contained medical diagnoses, they contained no information regarding the cause of appellant's condition and are, therefore, irrelevant to the issue in this case. The Board, therefore, finds that the Office properly denied appellant's application for reconsideration of his claim.

⁵ 20 C.F.R. § 10.138(b)(2).

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

The decision of the Office of Workers' Compensation Programs dated October 22, 1996 is hereby affirmed.

Dated, Washington, D.C.
December 8, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member