

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JULIA CHESTNUT and U.S. POSTAL SERVICE,
POST OFFICE, Baltimore, Md.

*Docket No. 96-977; Submitted on the Record;
Issued February 23, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

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.

This is the second appeal in this case. In the first appeal, the Board issued a decision dated January 26, 1995,¹ in which it affirmed an Office decision dated June 17, 1992, in which the Office denied appellant merit review of her claim. The facts and background of the case are set forth in the Board's prior decision and are incorporated herein by reference.

The only decision before the Board in this appeal is the Office's decision dated August 11, 1995 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 June 17, 1992 and the filing of appellant's appeal on February 26, 1996, the Board lacks jurisdiction to review the merits of appellant's claim.²

To require the Office to reopen a case for merit review under section 8128(a) of the Act,³ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advanced a point of law or a fact not previously

¹ Docket No. 93-2030.

² 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed.

³ 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).

considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.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 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.⁶

In appellant's application for review filed with the Office, she merely reiterated her contention that she did not receive the Office decision dated July 18, 1989. She, thus, 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. Furthermore, she submitted no new evidence in support of her request. Consequently, the evidence submitted by appellant did not meet the requirements set forth at 20 C.F.R. § 10.138.⁷

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.⁸ Such was not the case here and the Board finds that the Office properly denied appellant's application for reconsideration of his claim.

⁴ 20 C.F.R. § 10.138(b)(1) and (2).

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

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ The record indicates that appellant submitted evidence subsequent to the Office's August 11, 1995 decision. The Board cannot consider this evidence as the Board's review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

⁸ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The decision of the Office of Workers' Compensation Programs dated August 11, 1995 is hereby affirmed.

Dated, Washington, D.C.
February 23, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member