

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ESSIE MAE HUMPHREY and U.S. POSTAL SERVICE,  
POST OFFICE, Inglewood, Calif.

*Docket No. 96-1369; Submitted on the Record;  
Issued July 16, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

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 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 November 28, 1995 nonmerit decision denying appellant's application for a review of its January 27, 1994 decision.<sup>1</sup> Because more than one year has elapsed between the issuance of the Office's January 27, 1994 merit decision and April 12, 1996, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the January 27, 1994 decision and any preceding decisions.<sup>2</sup>

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>3</sup> 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.<sup>4</sup> To be entitled to a merit review of an Office

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<sup>1</sup> By decision dated January 27, 1994, the Office denied modification of its March 3 and June 21, 1993 decisions which denied modification of the April 29, 1992 hearing representative's decision which affirmed the August 28, 1991 denial of appellant's claim for an emotional condition related to compensable factors of her federal employment.

<sup>2</sup> See 20 C.F.R. § 501.3(d)(2).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.<sup>5</sup> When a claimant fails to meet one of the above-mentioned 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.<sup>6</sup>

By letter dated November 15, 1994, appellant requested reconsideration of the Office's January 27, 1994 decision denying modification of its decisions rejecting her claim for an emotional condition. In support of the request appellant submitted a 10 page letter presenting her interpretation of the medical and factual evidence of record. The Board finds that this November 15, 1994 letter is cumulative and substantially similar to material previously of record which had already been considered by the Office. The Board has found that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>7</sup> Consequently, appellant has not presented relevant and pertinent evidence not previously considered by the Office, sufficient to require that the Office reopen her case for a reconsideration of its merits.

In the present case, appellant has not established that the Office abused its discretion in its November 28, 1995 decision by denying her request for reconsideration of its January 27, 1994 decision under section 8128(a) of the Act. Appellant has failed to show that the Office erroneously applied or interpreted a point of law, failed to advanced a point of law or a fact not previously considered by the Office or failed to submitted relevant and pertinent evidence not previously considered by the Office.

As the only limitation on the Office's authority is reasonableness, an abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.<sup>8</sup>

Appellant has made no such showing here.

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<sup>5</sup> 20 C.F.R. § 10.138(b)(2).

<sup>6</sup> *Joseph W. Baxter*, 36 ECAB 228 (1984).

<sup>7</sup> *Jerome Ginsberg*, 32 ECAB 31 (1980).

<sup>8</sup> *Rebel L. Cantrell*, 44 ECAB 660 (1993); *Billy G. Reeder*, 44 ECAB 578 (1993); *Patsy R. Tatum*, 44 ECAB 490 (1993); *Wilson L. Clow*, 44 ECAB 157 (1992); *Daniel J. Perea*, 42 ECAB 214 (1990).

Accordingly, the decision of the Office of Workers' Compensation Programs dated November 28, 1995 is hereby affirmed.

Dated, Washington, D.C.  
July 16, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member