

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNY JACKSON and U.S. POSTAL SERVICE,
VEHICLE MAINTENANCE FACILITY, Dallas, Tex.

*Docket No. 96-1354; Submitted on the Record;
Issued March 11, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for merit review under 5 U.S.C. § 8128.

In the present case, appellant filed a claim alleging that he sustained an emotional condition in the performance of duty on March 29, 1990. By decision dated December 16, 1992, the Office accepted the claim for an adjustment disorder. In a decision dated June 1, 1993, the Office rescinded acceptance of the claim. By decisions dated August 18, 1993 and December 1, 1994, the Office denied modification of the June 1, 1993 decision. On November 29, 1995 appellant requested reconsideration of his claim, and by decision dated February 14, 1996, the Office denied the request without review of the merits of the claim.

The Board has reviewed the record and finds that the Office did not abuse its discretion in refusing to reopen the claim for merit review.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ the Office's regulations provide that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or interpreted a point of law, or (2) advancing a point of law or fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.² Section 10.138(b)(2) states that any application for review that does not meet at least

¹ 5 U.S.C. § 8128(a) (providing that "[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.")

² 20 C.F.R. § 10.138(b)(1).

one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.³

In his November 29, 1995 request for reconsideration, appellant stated that he was advancing points of law and fact not previously considered by the Office. The Board is unable, however, to find new and relevant points raised by appellant. In this case, the Office rescinded acceptance of the claim, and has determined that appellant has not alleged and substantiated compensable factors of his federal employment on March 29, 1990 as contributing to an emotional condition. On the issue of compensable work factors, appellant has not provided new information. Appellant asserted that he had established compensable work factors, but he referred to evidence previously of record and failed to provide any new and relevant evidence on this issue. Appellant submitted a report dated January 12, 1995 from Dr. Sharon L. Woodruff, a psychiatrist, but Dr. Woodruff does not discuss the alleged employment factors on March 29, 1990.⁴

With respect to points of law, appellant's request for reconsideration did not raise any new and relevant points. Appellant argued, for example, that the Office did not meet the requirements for rescinding acceptance of a claim, but this argument had previously been raised and considered by the Office. Other legal arguments lack a reasonable color of validity.⁵ Appellant asserted that the Office had not clearly indicated whether fact of injury had been established, but it is evident from the Office decisions that the Office has not accepted that appellant has established compensable factors of employment as contributing to his condition.

The Board finds that appellant has not shown that the Office erroneously applied or interpreted a point of law, has not advanced a relevant point of law or fact not previously considered, nor has he submitted relevant and pertinent evidence not previously considered. Accordingly, the Office did not abuse its discretion in refusing to reopen the case for merit review.

³ 20 C.F.R. § 10.138(b)(2); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

⁴ Unless a compensable factor of employment is established, the medical evidence on the issue of causal relationship between an emotional condition and employment is not considered; *see Sharon K. Watkins*, 45 ECAB 290 (1994).

⁵ *See Norman W. Hanson*, *supra* note 3.

The decision of the Office of Workers' Compensation Programs dated February 14, 1996 is affirmed.

Dated, Washington, D.C.
March 11, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member