

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY L. SNEED and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, Ohio

*Docket No. 96-1386; Submitted on the Record;
Issued May 18, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant was disabled for work after August 2, 1985 due to her accepted employment injury of December 29, 1975; and (2) whether the refusal of the Office of Workers' Compensation Programs, in its decision dated March 8, 1996, to reopen appellant's claim for merit review constituted an abuse of discretion.

The Board has given careful consideration to the issues involved, the contentions of appellant on appeal, and the entire case record.¹ The Board finds that the decision of the hearing representative of the Office dated and made final on November 20, 1995 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.²

Subsequent to the hearing representative's decision, appellant in a letter dated January 11, 1996, requested reconsideration and submitted a copy of 20 C.F.R. § 10.110, Evidence - *Burden of Proof* in support of her request. Appellant argues that she is entitled to wage-loss benefits as she has established that her disability was due to her federal employment.

¹ The Board notes that this is the second time this case has been before the Board. In the prior appeal, the Board granted the Director's Motion to Dismiss on the basis that appellant had made a timely request for an oral hearing before a hearing representative. *Betty L. Sneed*, Docket No. 94-132 (issued April 29, 1994).

² The Board notes that appellant claims she is entitled to disability retirement under the Federal Employees' Compensation Act since she elected that over Social Security disability retirement. Acceptance of a claim for disability by the Social Security Administration in no way tends to establish that a claimant sustained an injury in the performance of his federal duties. This issue has been raised in other cases and has been squarely settled by the Board. In the case of *Hazelee K. Anderson*, 37 ECAB 277 (1986), the Office rejected the claimant's claim on the grounds that the medical evidence of record failed to establish that she was disabled after March 13, 1979 as a result of her November 14, 1978 employment injury.

In a nonmerit decision dated March 8, 1996, the Office denied appellant's request for modification of the November 20, 1995 hearing representative's decision on the basis that appellant had not submitted any relevant or material evidence in support of her request for reconsideration.

The Board finds that the Office did not abuse its discretion by denying merit review on March 8, 1996.

Section 8128(a) of the Act³ provides for review of an award for or against payment of compensation. Section 10.138, the statute's implementing regulation, requires a written request by a claimant seeking review that specifies the issues which the claimant wishes the Office to review and the reasons why the decision should be changed.⁴ Thus, a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office.⁵

Section 10.138(b)(2) provides that if a request for review of the merits of the claim does not meet at least one of the three requirements, the Office will deny the request without reviewing the merits.⁶ If a claimant fails to submit relevant evidence not previously of record or advance legal contentions or facts not previously considered, the Office has the discretion to refuse to reopen a case for further consideration of the merits pursuant to section 8128.⁷

In this case, the Office properly declined to review the merits of appellant's claim on March 8, 1996. In requesting reconsideration, appellant was required to submit evidence addressing the relevant issue of disability after August 2, 1985. The evidence submitted by appellant in support of her request for reconsideration consisted of a copy of the Office's rule for submission of evidence. Inasmuch as appellant failed to submit new and relevant evidence probative to the issue of whether her alleged disability subsequent to August 2, 1985 was causally related to the accepted December 29, 1975 injury, the Office acted within its discretion in declining to reopen the claim.⁸

³ 5 U.S.C. §§ 8101-8193; 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.138(b)(1); *John F. Critz*, 44 ECAB 788, 793 (1993).

⁵ 20 C.F.R. § 10.138(b)(1)(i)-(iii); *Willie H. Walker, Jr.*, 45 ECAB 126, 131 (1993).

⁶ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁷ *John E. Watson*, 44 ECAB 612, 614 (1993).

⁸ See *Norman W. Hanson*, 45 ECAB 430, 435 (1994). The Office properly declined to reopen claim because appellant presented no new and relevant evidence.

The decisions of the Office of Workers' Compensation Programs dated March 8, 1996 and November 20, 1995 are affirmed.

Dated, Washington, D.C.
May 18, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member