

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARION THORNTON and DEPARTMENT OF THE NAVY,
NAVAL SHIPYARD, Portsmouth, N.H.

*Docket No. 96-2242; Submitted on the Record;
Issued September 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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 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 Board issued a decision on this claim on July 21, 1995, which found that the Office properly determined that appellant had no further employment-related residuals or disability after she stopped working on January 9, 1987, due to her exposure to second-hand smoke in her work environment.¹ The Board, therefore, affirmed the Office's July 12, 1993 decision. The facts of the case as set forth in the Board's prior decision are unincorporated by reference.

By letter dated March 8, 1998, appellant requested reconsideration of the Office's July 12, 1993 decision. No evidence was submitted with the reconsideration request.

By decision dated March 13, 1996, the Office denied appellant's reconsideration request.

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 Section 10.138(b)(2) provides that when an

¹ *Marion Thornton*, Docket No. 94-326 (issued July 21, 1995).

² 5 U.S.C. § 8181 *et seq.*

³ 20 C.F.R. § 10.138(b)(1) and (2).

application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁵ Evidence that does not address the particular issue involved, in this case whether the Office properly determined that appellant did not have any employment-related residuals or disability after she stopped working on January 9, 1987, does not constitute a basis for reopening the case.⁶

In the present case, appellant did not submit any evidence, which addressed the relevant issue of whether appellant had residual or disability after January 9, 1987. Rather she submitted copies of her correspondence with the Board and the Office regarding her request for reconsideration. Appellant has not established that the Office abused its discretion in its March 13, 1996 decision, by denying appellant's request for a review on the merits under section 8128(a) of the Act, because she has failed to show that the Office erroneously applied or interpreted a point of law or advanced a point of law or fact not previously considered by the Office or that she submitted relevant and pertinent evidence not previously considered by the Office. The materials related to appellant's correspondence with the Board following the July 21, 1995 decision, are not relevant to the issue in this case.

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 13, 1996 is hereby affirmed.

Dated, Washington, D.C.
September 24, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁶ *Richard L. Ballard*, *supra* note 5 at 150; *Edward Mathew Diekemper*, 31 ECAB 224, 225 (1979).