

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEAN A. CORE and U.S. POSTAL SERVICE,
POST OFFICE, El Paso, TX

*Docket No. 98-890; Submitted on the Record;
Issued December 8, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

Appellant, a 49-year-old letter carrier, filed a claim for benefits on April 28, 1994, alleging that she had sustained an emotional condition in the performance of duty. By decision dated August 30, 1994, the Office denied appellant's claim for compensation based on an emotional condition.

By letter dated September 9, 1994, appellant requested an oral hearing.

By decision dated February 12, 1996, an Office hearing representative affirmed the Office's August 30, 1994 decision denying compensation based on an emotional condition.

By letter dated February 11, 1997, appellant requested reconsideration of the Office's previous decision. In support of her request, appellant submitted three previously submitted medical reports, plus an affidavit, two witness statements and a complaint letter which the Office had reviewed in prior decisions.

By decision dated May 12, 1997, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

The only decision before the Board on this appeal is the May 12, 1997 Office decision which found that the letter submitted in support of appellant's request for reconsideration was insufficient to warrant review of its prior decision. Since the May 12, 1997 decision is the only

decision issued within one year of the date that appellant filed her appeal with the Board, January 14, 1998, this is the only decision over which the Board has jurisdiction.¹

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by (1) showing that the Office erroneously applied or interpreted a point of law; (2) by advancing a point of law or fact not previously considered by the Office; or (3) by submitting relevant and pertinent evidence not previously considered by the Office.² Section 10.138(b)(2) provides that when an 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.³ 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.⁴

In the present case, appellant has not shown that the Office erroneously applied or interpreted a point of law; she has not advanced a point of law or fact not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. Although appellant submitted several medical reports, all the medical evidence submitted by appellant was previously of record, and considered by the Office in reaching prior decisions. Thus, her request did not contain any new and relevant medical evidence for the Office to review. This is important since the outstanding issue in the case -- whether appellant established that she sustained an emotional condition in the performance of duty -- is medical in nature. Additionally, appellant's February 11, 1997 letter did not show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Although appellant generally contended that she sustained an emotional condition in the performance of duty, appellant failed to submit new and relevant medical evidence in support of this contention. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

¹ See 20 C.F.R. § 501.3(d)(2).

² 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.138(b)(2).

⁴ *Howard A. Williams*, 45 ECAB 853 (1994).

The decision of the Office of Workers' Compensation Programs dated May 12, 1997 is hereby affirmed.

Dated, Washington, D.C.
December 8, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member