

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT E. MYERS and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

*Docket No. 98-1428; Submitted on the Record;
Issued December 7, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
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 finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his 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 March 9, 1998 decision denying appellant's request for a review on the merits of its January 8 and March 12, 1997 decisions. Because more than one year has elapsed between the issuance of the Office's January 8 and March 12, 1997 decisions and March 30, 1998, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the January 8 and March 12, 1997 decisions.¹

In the present case, appellant alleged that he sustained an emotional condition when his supervisor, Bill Bishoff, harassed him at work on December 2, 1996. Appellant claimed that Mr. Bishoff yelled at him and stood close to him in an intimidating manner. By decision dated January 8, 1997, the Office denied appellant's claim on the grounds that he did not establish any compensable employment factors. The Office noted that appellant did not submit sufficient factual evidence to establish that his supervisor harassed him at work on December 2, 1996. By decision dated March 12, 1997, the Office denied modification of its January 8, 1997 decision. Appellant requested reconsideration of his claim and, by decision dated March 9, 1998, the Office denied appellant's request for merit review.

¹ See 20 C.F.R. § 501.3(d)(2).

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 To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above 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.⁵

By letter dated November 25, 1997, appellant requested reconsideration of his claim. In his reconsideration letter, appellant provided a description of the events of December 2, 1996 which he felt constituted harassment. The Board notes, however, that the submission of this description is not sufficient to require reopening of appellant's claim in that the description is similar to prior statements submitted by appellant and considered by the Office. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁶ Appellant also submitted medical reports in support of his reconsideration request, including reports of Dr. Gerald Boutin, an attending clinical psychologist. The submission of these documents is not sufficient to require reopening of appellant's claim in that the documents do not relate to the main issue of the present claim which is essentially factual in nature, *i.e.*, whether appellant submitted sufficient factual evidence to establish any compensable employment factors. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁷

In the present case, appellant has not established that the Office abused its discretion in its March 9, 1998 decision by denying his request for a review on the merits of its January 8 and March 12, 1997 decisions under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, that he advanced a point of law or a fact not previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office.

² 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[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." 5 U.S.C. § 8128(a).

³ 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

⁷ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decision of the Office of Workers' Compensation Programs dated March 9, 1998 is affirmed.

Dated, Washington, D.C.
December 7, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member