

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSE L. ALANIZ and DEPARTMENT OF THE AIR FORCE,
SAN ANTONIO AIR LOGISTICS CENTER, KELLY AIR FORCE BASE, Tex.

*Docket No. 97-1306; Submitted on the Record;
Issued February 2, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

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 his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

On January 5, 1995 appellant, then a 38-year-old aircraft electrician supervisor, filed an occupational claim, Form CA-2, alleging that on July 2, 1991 he developed moderate restrictive lung disease due to his exposure to asbestos and other hazardous chemicals. Appellant submitted evidence to support his claim including medical records and evidence that he was exposed to hazardous chemicals and asbestos during his employment.

By decision dated November 6, 1995, the Office denied appellant's claim stating that the evidence of record failed to establish that an injury was sustained as alleged.

By letter dated October 20, 1996, appellant requested reconsideration of the decision and submitted evidence to establish that he was exposed to hazardous chemicals during his employment with the employing establishment and his release from active duty, Forms 78 and 88, dated January 11, 1979 showing he had no lung disease.

By decision dated November 19, 1996, the Office denied appellant's reconsideration request, stating that the evidence submitted was found to be of an immaterial nature and was not sufficient to warrant review of the prior decision.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed the appeal with the Board on February 24, 1997, the only decision properly before the Board is the November 19, 1996 decision denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of 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 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 appellant's moderate restrictive lung disease is causally related to factors of federal employment, does not constitute a basis for reopening the case.⁶

In the present case, appellant submitted evidence to support that he was exposed to hazardous chemicals and asbestos during his employment with the employing establishment and that he had no lung disease as of January 11, 1979. As shown in its November 6, 1995 decision, however, the Office accepted that appellant was exposed to hazardous chemicals and asbestos. Therefore, the evidence appellant submitted on this issue is repetitious and not relevant to his claim. Further, the January 11, 1979 medical document showing appellant had no lung disease at that time does not establish whether his current lung problem is causally related to factors of federal employment and therefore is also not relevant.

Appellant has not established that the Office abused its discretion in its November 19, 1996 decision by denying his request for a review on the merits of its November 6, 1995 decision under section 8128(a) of the Act because he 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 he submitted relevant and pertinent evidence not previously considered by the Office.

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.138(b)(1) and (2).

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

The decision of the Office of Workers' Compensation Programs dated November 19, 1996 is hereby affirmed.

Dated, Washington, D.C.
February 2, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member