

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FREEMAN STRODER and DEPARTMENT OF THE ARMY,  
81ST ARMY RESERVE COMMAND, Tampa, Fla.

*Docket No. 97-1474; Submitted on the Record;  
Issued February 23, 1999*

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DECISION and ORDER

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

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.

The only decision before the Board on this appeal is the Office's February 19, 1997 nonmerit decision denying appellant's application for a review on the merits of its April 28, 1994 decision.<sup>1</sup> Because more than one year has elapsed between the issuance of the Office's April 28, 1994 merit decision and March 12, 1997, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the April 28, 1994 decision and any preceding decisions.<sup>2</sup>

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<sup>1</sup> By decision dated April 28, 1994, the Office denied appellant's March 10, 1994 claim for recurrence of disability on an unspecified date, due to his March 11, 1976 employment injuries. On May 11, 1994 appellant requested reconsideration of the April 28, 1994 decision, which was denied by the Office as untimely filed on August 8, 1994. The Board ordered the case remanded for reconsideration of the May 11, 1994 request finding it timely filed, by Docket No. 95-204, issued January 7, 1997.

<sup>2</sup> 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,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> When a claimant fails to meet one of the above-mentioned 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.<sup>6</sup>

By letter dated May 11, 1994, appellant requested reconsideration of the Office's April 28, 1994 decision denying his claim for recurrence of disability on an unspecified date. In support of the request, appellant submitted two statements from his former coworkers attesting to the facts surrounding his March 11, 1976 employment injuries. The Office found and the Board now confirms that these statements merely support what the Office has already accepted and not disputed, which is that appellant sustained multiple injuries on March 11, 1976. The Office further found, and the Board further confirms that these statements are, therefore, irrelevant to the issue in question, which is whether appellant's claimed recurrence of disability on an unspecified date is causally related to his accepted employment injuries. As this issue is medical in nature, it can only be established by rationalized medical evidence submitted from a treating physician. The Board has found that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>7</sup> Consequently, appellant has not presented relevant and pertinent evidence not previously considered by the Office, sufficient to require that the Office reopen his case for a reconsideration of its merits.

In the present case, appellant has not established that the Office abused its discretion in its February 19, 1997 decision by denying his request for a review on the merits of its April 28, 1994 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, failed to advanced a point of law or a fact not previously considered by the Office or failed to submit relevant and pertinent evidence not previously considered by the Office.

As the only limitation on the Office's authority is reasonableness, an abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 20 C.F.R. § 10.138(b)(1), 10.138(b)(2).

<sup>5</sup> 20 C.F.R. § 10.138(b)(2).

<sup>6</sup> *Joseph W. Baxter*, 36 ECAB 228 (1984).

<sup>7</sup> *Mary Lou Barragy*, 46 ECAB 781 (1995); *Daniel Deparini*, 44 ECAB 657 (1993); *Richard L. Ballard*, 44 ECAB 146 (1992).

judgment, or actions taken which are contrary to both logic and probable deductions from known facts.<sup>8</sup>

Appellant has made no such showing here.

Accordingly, the decision of the Office of Workers' Compensation Programs dated February 19, 1997 is hereby affirmed.

Dated, Washington, D.C.  
February 23, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> *Rebel L. Cantrell*, 44 ECAB 660 (1993); *Billy G. Reeder*, 44 ECAB 578 (1993); *Patsy R. Tatum*, 44 ECAB 490 (1993); *Wilson L. Clow, Jr.*, 44 ECAB 157 (1992); *Daniel J. Perea*, 42 ECAB 214 (1990).