

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JULIUS CORMIER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Waco, Tex.

*Docket No. 97-850; Submitted on the Record;
Issued January 14, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
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 her 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 Office did not abuse its discretion in denying appellant's request for review.

The only decision before the Board in this appeal is the Office's decision dated October 22, 1996 denying appellant's application for review. Since more than one year had elapsed between the date of the Office's most recent merit decision finalized on August 5, 1995 and the filing of appellant's appeal on December 19, 1996, the Board lacks jurisdiction to review the merits of appellant's claim.¹

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 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.⁴ To be entitled to merit review of an

¹ 20 C.F.R. § 501.3(d)(2).

² 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) and (2).

⁴ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁵

This is the second appeal in this case.⁶ By decision and order dated March 15, 1996, the Board affirmed a July 25, 1995 decision of the Office, finding that the Office properly reduced appellant's compensation, effective that day, on the grounds that he no longer had a dependent. The law and facts as set forth in the previous decision and order are incorporated herein by reference.

Subsequent to the March 15, 1996 Board decision, by letter dated September 5, 1996, appellant requested that the Office reconsider the March 15, 1996 Board decision.⁷ By decision dated September 12, 1996, the Office denied appellant's request on the grounds that he neither raised substantive legal questions nor included new and relevant evidence.

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.⁸ While appellant submitted additional medical evidence subsequent to the March 15, 1996 decision,⁹ this evidence is not relevant to the issue in this case, whether the Office properly reduced appellant's compensation effective July 25, 1995, and are, therefore, irrelevant to the issue in this case. As appellant submitted no new relevant evidence and did not articulate any legal argument with a reasonable color of validity in support of his request for reconsideration, the Board finds that the Office properly denied appellant's application for reconsideration of his claim.

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ Docket No. 95-2742 (issued March 15, 1996).

⁷ Appellant had previously submitted a letter to the Office dated August 22, 1996. Following a request for clarification by the Office dated September 3, 1996, he submitted the September 5, 1996 reconsideration request.

⁸ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁹ This consisted of treatment notes dated April 10, May 13, June 12 and July 16, 1996 from Dr. Harry W. Slade, his treating Board-certified neurosurgeon, who reiterated findings and conclusions found in evidence previously considered by the Office and the Board.

The decision of the Office of Workers' Compensation Programs dated September 12, 1996 is hereby affirmed.

Dated, Washington, D.C.
January 14, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member