

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM M. COCHRAN and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Harlan, Ky.

*Docket No. 98-140; Submitted on the Record;
Issued July 14, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met his burden of proof to establish that his coal workers' pneumoconiosis was caused by factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

The Board has given careful consideration to the issues involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office dated February 24, 1997 affirming the Office's January 23, 1996 decision, denying appellant's claim on the grounds that appellant failed to establish that his coal workers' pneumoconiosis was caused by factors of his employment is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

Subsequent to the hearing representative's February 24, 1997 decision, appellant requested reconsideration in a letter dated March 27, 1997 accompanied by medical evidence. By decision dated July 14, 1997, the Office denied appellant's request for reconsideration without a merit review of the claim.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ 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.² To be entitled to a merit review of an Office

¹ 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 her own motion or on application." 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.138(b)(1)-(2).

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.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

In support of his request for reconsideration, appellant submitted three copies of a November 10, 1993 medical report of Dr. Glen R. Baker, a certified B-reader, revealing that appellant had coal workers' pneumoconiosis. The Board finds that this evidence is duplicative because it was already of record.⁵ Therefore, appellant has not shown that the Office erroneously applied or interpreted a point of law, advanced a point of law or fact not previously considered by the Office, or submitted relevant and pertinent evidence not previously considered by the Office. Accordingly, the Board finds that the Office properly declined to review the merits of appellant's claim.

The July 14 and February 24, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

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

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

³ *Id.* at § 10.138(b)(2).

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

⁵ *Philip J. Deroo*, 39 ECAB 1294 (1988).