

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of VIOLA P. PARKER and DEPARTMENT OF THE NAVY,  
NAVAL HOSPITAL, Portsmouth, Va.

*Docket No. 97-2660; Submitted on the Record;  
Issued June 8, 1999*

---

DECISION and ORDER

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

This is the second appeal in the present case. In the prior appeal, the Board issued a decision and order<sup>1</sup> on March 3, 1997 in which it affirmed the February 21, 1995 decision of the Office on the grounds that appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after April 23, 1982 due to her December 5, 1972 employment injury. The Office had accepted that appellant sustained an employment-related fracture of the radial head of her left arm on December 5, 1972. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>2</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>3</sup> To be entitled to a merit review of an Office

---

<sup>1</sup> Docket No. 95-1514.

<sup>2</sup> 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).

<sup>3</sup> 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(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.<sup>4</sup> 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.<sup>5</sup>

After the issuance of the Board's March 3, 1997 decision, appellant requested reconsideration of her claim before the Office. In a letter dated May 8, 1997, appellant asserted that she continued to have residuals of her December 5, 1972 employment injury. The submission of this letter is not sufficient to require reopening of appellant's claim in that the letter does not relate to the main issue of the present case, *i.e.*, whether appellant submitted adequate medical evidence to establish that she sustained a recurrence of disability on or after April 23, 1982 due to her December 5, 1972 employment injury. This issue is medical in nature and should be resolved by the submission of medical evidence. 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.<sup>6</sup>

In the present case, appellant has not established that the Office abused its discretion in its July 26, 1997 decision by denying her request for a review of its prior merit decision under section 8128(a) of the Act, because she has failed to show that the Office erroneously applied or interpreted a point of law, that she advanced a point of law or a fact not previously considered by the Office or that she submitted relevant and pertinent evidence not previously considered by the Office.

---

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

<sup>5</sup> *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

<sup>6</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decision of the Office of Workers' Compensation Programs dated July 26, 1997 is affirmed.

Dated, Washington, D.C.  
June 8, 1999

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member