

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARON D. ECHOLS and U.S. POSTAL SERVICE,
WHITE STATION POST OFFICE, Memphis, Tenn.

*Docket No. 97-2066; Submitted on the Record;
Issued March 11, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's case for a merit review.

The Board has duly reviewed the case record in this appeal and finds that the Office did not abuse its discretion in refusing to reopen appellant's case for a merit review.

The only decision before the Board on this appeal is the Office's October 21, 1996 decision denying appellant's request for a review on the merits of its October 10, 1995 decision finding the evidence of record insufficient to establish that appellant sustained an emotional condition while in the performance of duty. Because more than one year has elapsed between the issuance of the Office's October 10, 1995 decision and June 11, 1997, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the October 10, 1995 decision.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 To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the

¹ 20 C.F.R. § 501.3(d)(2).

² 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).

³ 20 C.F.R. §§ 10.138(b)(1)-(2).

⁴ *Id.* at § 10.138(b)(2).

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.⁵

In support of her request for reconsideration, appellant submitted a September 27, 1996 narrative statement. In this statement, appellant indicated that her emotional condition was caused by a verbal altercation with Ms. Chambers, an employing establishment station manager, regarding her job assignment. However, this document is merely repetitious of appellant's statement regarding the same incident as she provided in her Equal Employment Opportunity request for counseling, which was considered by the Office in its October 10, 1995 decision. Thus, appellant has not shown 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 submitted relevant and pertinent evidence not previously considered by the Office. Accordingly, the Board finds that the Office properly declined to review appellant's request for reconsideration.

The October 21, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
March 11, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).