

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNIE R. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, TN

*Docket No. 98-1057; Submitted on the Record;
Issued November 1, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
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 November 13, 1997 denying appellant's application for review. Since more than one year had elapsed between the date of the Office's most recent merit decision dated August 22, 1996 and the filing of appellant's appeal on February 9, 1998, 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 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 Office decision denying

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).

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

The facts in this case indicate that on November 20, 1993 appellant, then a 53-year-old multi-position letter sorting machine (MPLSM) supervisor, filed a claim, alleging that employment-related stress was caused by her position being changed on November 19, 1993. Following further development, by decision dated December 16, 1993, the Office denied the claim, finding that appellant failed to establish fact of injury. Appellant timely requested a hearing and, in a decision dated and finalized on August 1, 1995, an Office hearing representative affirmed the prior decision, finding that the employing establishment had not committed error and abuse in reassigning appellant. Appellant requested reconsideration and submitted additional evidence including witness statements. By decision dated August 22, 1996, the Office denied modification of the prior decision, finding that the witness statements did not establish error or abuse. On August 11, 1997 appellant, through counsel, requested reconsideration, stating that the evidence of record established that the employing establishment committed error and abuse on November 11, 1993 because it had not followed proper procedures in reassigning appellant. No further evidence was submitted. By decision dated November 13, 1997, the Office denied appellant's request, finding appellant's argument repetitious in nature.

On appeal, appellant, through counsel, is contending that the evidence establishes appellant's claim. The issue in this case is, however, whether 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) constituted an abuse of discretion. 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.⁶

With the request for reconsideration, appellant's counsel argued that the employing establishment committed error and abuse on November 11, 1993 because it had not followed proper procedures in reassigning appellant. No new evidence was submitted. As this argument had been previously considered by the Office in its decisions dated August 1, 1995 and August 22, 1996 and the record in this case indicates that the Office considered all the evidence of record, the Board finds that the Office properly denied appellant's application for merit review.⁷

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁷ See *Norman W. Hanson*, 45 ECAB 430 (1994).

The decision of the Office of Workers' Compensation Programs dated November 13, 1997 is hereby affirmed.

Dated, Washington, D.C.
November 1, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member