

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BENNIE GRANDY and DEPARTMENT OF THE NAVY, FACILITIES
ENGINEERING COMMAND, HRO SAN FRANCISCO BAY, Oakland, CA

*Docket No. 97-2575; Submitted on the Record;
Issued October 12, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

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 his claim pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has duly reviewed the case with respect to the issue in question and finds that the Office did not abuse its discretion by refusing to reopen appellant's case for a merit review of his claim pursuant to 5 U.S.C. § 8128(a).

The only decision before the Board on this appeal is the Office's January 8, 1997 decision denying appellant's request for a review on the merits of its decision dated July 31, 1996.¹ Because more than one year has elapsed between the issuance of the Office's July 31, 1996 decision and August 1, 1997, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the prior Office decision.²

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ 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 fact not previously considered by the Office; or (3) submit relevant and pertinent evidence

¹ In this decision the Office denied modification of a May 30, 1996 decision finding that the evidence was insufficient to establish total disability for the period March 30 to April 23, 1996. A subsequent nonmerit denial of appellant's application for review issued on October 21, 1997 is null and void as the Board took jurisdiction of the case on August 5, 1997. *Douglas E. Billings*, 41 ECAB 880 (1990).

² See 20 C.F.R. § 501.3(d)(2). The Board notes that July 31, 1997 fell on a Thursday.

³ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, the 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).

not previously considered by the Office.⁴ To be entitled to a merit review of an 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 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.⁶ Evidence that repeats or duplicates evidence already in the case record has no new evidentiary value and does not constitute a basis for reopening a case.⁷ Evidence that does not address the particular issue involved also constitutes no basis for reopening a case.⁸

By letter dated October 22, 1996, appellant requested reconsideration of the July 31, 1996 decision. In support of the request, appellant submitted an argument that the government should honor its obligations; and that the government doctor, Dr. Lin, diagnosed his injury to be a “spring” and told him on January 22, 1996 to try to take it easy for two to three weeks, but that the injury got worse. Appellant claimed that on March 6, 1996 Dr. Lin gave him a slip to see any outside foot doctor. An individual sick slip was attached which noted appellant’s name and social security number, checked disposition of patient as “other,” and remarked “to see his own medical provider. Appellant claimed that he saw a foot doctor, Dr. Townsend, who diagnosed his injury as a spur injury to his heel, began treatment on March 19, 1996 and advised appellant that he would have to stay off his feet to have it heel properly. Appellant claimed disability entitlement from April 1 through June 30, 1996. As this evidence consisted solely of statements from a lay person it was not probative medical evidence supporting disability causally related to appellant’s January 17, 1996 accepted right heel contusion injury,⁹ from which he was able to return to full duty on January 22, 1996 and as it was duplicative of arguments previously made and considered by the Office for its July 31, 1996 decision, it did not constitute evidence not previously considered by the Office and therefore did not constitute a basis for reopening appellant’s claim for further consideration on its merits. Consequently, appellant has not presented relevant and pertinent evidence not previously considered by the Office.

In the present case, appellant has not established that the Office abused its discretion in its January 8, 1997 decision by denying his request for a review on the merits of its July 31, 1996 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, failed to advance a point of law or a fact not previously considered by the Office or failed to submit relevant and pertinent evidence not previously considered by the Office.

⁴ 20 C.F.R. § 10.138(b)(1),(2).

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ *Joseph W. Baxter*, 36 ECAB 228 (1984).

⁷ *Mary G. Allen*, 40 ECAB 190 (1988); *Eugene F. Butler*, 36 ECAB 393 (1984).

⁸ *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁹ *See Shiela Arbour (Victor E. Arbour)*, 43 ECAB 779 (1992); *Barbara J. Williams*, 40 ECAB 649 (1989).

As the only limitation on the Office's authority is reasonableness, an abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.¹⁰ Appellant has made no such showing here.

Consequently, the decision of the Office of Workers' Compensation Programs dated January 8, 1997 is hereby affirmed.

Dated, Washington, D.C.
October 12, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

¹⁰ *Daniel J. Perea*, 42 ECAB 214 (1990).