

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EVA E. (DE LEON) KAA and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, Quantico, VA

*Docket No. 98-434; Submitted on the Record;
Issued September 2, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying merit review of this case on October 16, 1997.

This is the second appeal of this case before the Board. In a decision dated July 29, 1997,¹ the Board found that appellant was not entitled to continuation of pay for the period October 30, 1992 to April 26, 1993. The Board noted that appellant had sustained a traumatic injury causing a right knee strain in the performance of duty on July 8, 1992. Appellant obtained medical treatment on July 9, 1992 but did not stop work due to disability until October 30, 1992. As appellant's disability began on October 30, 1992, more than 90 days following the traumatic injury, appellant was not entitled to payment of continuation of pay benefits. The Board explained that pursuant to the Office's regulations only an employee of the United States who sustains a traumatic job-related injury; files claim for a period of wage loss as required by 5 U.S.C. § 8118(a) within 30 days of the injury on a form approved by the Secretary; and who has a disability which begins within 90 days of the injury is entitled to receipt of continuation of pay.²

On August 27, 1997 appellant requested reconsideration by the Board of its July 29, 1997 decision. Appellant asserted that the Board had failed to address the equitable argument of detrimental reliance made by appellant. This request for reconsideration was also carbon copied to the Office. The Board denied appellant's petition for reconsideration on January 27, 1998. The Office designated appellant's petition for reconsideration of the Board's July 29, 1997 decision as a request for reconsideration before the Office. By decision dated October 16, 1997, the Office denied appellant's application for review.

The Office's regulations at 20 C.F.R. § 10.138(b)(1) provide that a claimant may obtain a review of the merits of his or her claim by showing that the Office erroneously applied or

¹ Docket No. 95-1661 (issued July 29, 1997).

² 20 C.F.R. § 10.201.(a).

interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.³

While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening for further review of the merits is not required where the legal contention does not have a reasonable color of validity.⁴ Appellant's equitable argument of detrimental reliance was previously considered by the Board in its decision dated July 29, 1997 and specifically addressed in the Board's Order Denying Petition for Reconsideration dated January 27, 1998. Continuation of pay is authorized by section 8118 of the Federal Employees' Compensation Act.⁵ Neither the Act nor its implementing regulation at 20 C.F.R. § 10.201 provide for exceptions to the time limitations set forth due to "detrimental reliance." Neither the Office nor the Board has the authority to enlarge the terms of the Act nor to make an award of benefits under any terms other than those specified in the statute.⁶ The Office, therefore, did not abuse its discretion in denying merit review of the claim, based upon this same argument, which lacks a reasonable color of legal validity.

The decision of the Office of Workers' Compensation Programs dated October 16, 1997 is hereby affirmed.

Dated, Washington, D.C.
September 2, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

³ 20 C.F.R. § 10.138(b)(2); *Norman W. Hanson*, 45 ECAB 430 (1994).

⁴ *Nora Favors*, 43 ECAB 403 (1992).

⁵ 5 U.S.C. § 8118.

⁶ *Dempsey Jackson, Jr.*, 40 ECAB 942 (1989).