

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARRYL W. HANSEN and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 98-615; Submitted on the Record;
Issued September 9, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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.

In a letter decision dated November 15, 1996, the Office granted appellant a schedule award for a seven percent permanent impairment for bilateral hearing loss. Appellant requested reconsideration on August 6, 1997 and submitted a narrative statement expressing his personal assessment of the medical evidence of record. On November 6, 1997 the Office denied appellant's request for reconsideration in a nonmerit decision.

The Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed his appeal with the Board on November 20, 1997, the date of postmark, the only decision properly before the Board is the November 6, 1997 denial of merit review.

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

¹ 20 C.F.R. §§ 501.2(c), 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 his own motion or on application." 5 U.S.C. § 8128(a).

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 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 his reconsideration request, appellant submitted a narrative statement. This narrative statement does not show that the Office erroneously applied or interpreted a point of law. Nor does it advance a point of law or a fact not previously considered. Appellant did not submit any new medical evidence.

Because appellant did not satisfy any of the criteria of 20 C.F.R. § 10.138(b)(1) requiring a merit review of his claim, the Office properly denied merit review under 20 C.F.R. § 10.138(b)(2).

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 deductions from known facts.⁶ The Board finds no evidence in the case record of any such abuse of discretion.

Accordingly, appellant did not provide a sufficient evidentiary basis for reopening his claim, and the Office properly employed its discretion in refusing to reopen the case for further review on the merits.⁷

³ 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

⁴ 20 C.F.R. § 10.138(b)(2).

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

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

⁷ *Jimmy O. Gilmore*, 37 ECAB 257, 262 (1985).

The decision of the Office of Workers' Compensation Programs dated November 6, 1997 is affirmed.

Dated, Washington, D.C.
September 9, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member