

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PEGGY L. BOOKER and TENNESSEE VALLEY AUTHORITY,
COMPTROLLER, Knoxville, TN

*Docket No. 98-719; Submitted on the Record;
Issued September 17, 1999*

DECISION and ORDER

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

This is appellant's second appeal before the Board. In the prior appeal, the Board affirmed the May 26, 1992 and October 7, 1991 decisions by the Office, finding that the Office met its burden of proof to terminate appellant's compensation effective September 18, 1991 and finding that appellant failed to establish that her arthritis condition was causally related to her employment.¹

The Board has duly reviewed the case record in the present appeal and finds that 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), did not constitute an abuse of discretion.

The only decision before the Board on this appeal is the Office's September 9, 1997 decision denying appellant's application for a review on the merits of its September 6, 1996 decision. Because more than one year has elapsed between the issuance of the Office's September 6, 1996 merit decision and December 8, 1997, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the September 6, 1996 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 Docket No. 92-2034 (issued January 9, 1995). Appellant requested reconsideration of the May 26, 1992 and October 7, 1991 decisions which was denied by the Office on June 16, 1995, and again requested reconsideration which was denied by the Office on September 6, 1996.

² See 20 C.F.R. § 501.3(d)(2).

³ 5 U.S.C. §§ 8101-8193.

(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.⁴ 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.⁵ When a claimant fails to meet one of the above-mentioned 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 which does not address the particular issue involved is irrelevant, and therefore does not constitute a basis for reopening a case.⁷

By letter dated September 4, 1997, appellant requested reconsideration of the Office's September 6, 1996 decision. Appellant however did not submit any argument or evidence in support of her September 4, 1997 reconsideration request, and the Office, consequently, had no basis on which to reopen her claim for review on its merits.⁸

In the present case, therefore, appellant has not established that the Office abused its discretion in its September 9, 1997 decision by denying her request for a review on the merits of its September 6, 1996 decision under section 8128(a) of the Act, because she has failed to show that the Office erroneously applied or interpreted a point of law, failed to advanced a point of law or a fact not previously considered by the Office or failed to submitted relevant and pertinent evidence not previously considered by the Office.

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.⁹ Appellant has made no such showing here.

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

⁵ 20 C.F.R. § 10.138(b)(2).

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

⁷ *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 228 (1984).

⁸ Appellant did claim that she was in the process of gathering information to support her claim, which would be forwarded within three to four weeks. Nothing further, however, was submitted to the record.

⁹ *Daniel J. Perea*, 42 ECAB 214 (1990).

Consequently, the decision of the Office of Workers' Compensation Programs dated September 9, 1997 is hereby affirmed.

Dated, Washington, D.C.
September 17, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member