

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY L. MEREDITH and DEPARTMENT OF DEFENSE,
DEFENSE GENERAL SUPPLY CENTER, Richmond, VA

*Docket No. 00-344; Submitted on the Record;
Issued December 8, 2000*

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 the third appeal before the Board. In a decision dated May 13, 1994, the Board affirmed a decision of the Office of Workers' Compensation Programs dated May 14, 1992 and an October 23, 1992 Office decision in part.¹ The Board affirmed the Office's May 14 and October 23, 1992 decisions, finding that appellant had failed to establish that she developed carpal tunnel syndrome in her right hand in the performance of duty. The Board reversed a portion of the October 23, 1992 decision, finding that the Office improperly rescinded its acceptance of appellant's May 21, 1991 claim for carpal tunnel syndrome of the left hand, as the Office did not present any new or different evidence as a basis for its determination. In its most recent decision dated May 7, 1998, the Board affirmed the Office's January 9, 1997 decision, denying modification of a prior decision and found that appellant had not established that she had any disability after July 1, 1994, causally related to her accepted employment injury.² The history of the case is contained in the Board's prior decisions and is incorporated herein by reference.

Appellant sought modification of the January 9, 1997 Office decision in a letter dated November 17, 1998. In support, appellant submitted two decisions by the Department of Health and Human Services, Social Security Administration dated September 12 and November 28, 1994 and a copy of a CA-20 form report from Dr. Reginald Jackson, attending physician, dated October 21, 1996.

¹ Docket No. 93-575.

² Docket No. 97-241.

The Office reviewed these documents and by decision dated June 17, 1999, denied appellant's request for review of the merits.³ The Office found that the social security decisions submitted were immaterial and the evidence in the CA-20 report had been previously considered. The Office, therefore, found that these documents were insufficient to warrant reopening of appellant's case for a further review on its merits.

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 Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.⁴ Since appellant filed her appeal on September 13, 1999, the only decision over which the Board has jurisdiction on this appeal is the June 17, 1999 decision, denying her request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁵ the Office's regulations provide in section 10.606(b)(2) of the Code of Federal Regulations that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a point of law; (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁶

To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file his application for review within one year of the date of that decision.⁷ 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.⁸

The Board finds that the Office properly determined that the evidence submitted on reconsideration was insufficient to warrant reopening of appellant's case. Appellant submitted two decisions dated September 12 and November 28, 1994 from the Social Security Administration, which she argued established disability. Disability determinations by other

³ The Board notes that the Office also prepared a decision dated June 17, 1999, denying appellant's November 17, 1998 request for review on the basis that it was untimely. The record reflects that the Office previously issued this decision on May 10, 1999; however, the decision was never mailed to appellant.

⁴ See 20 C.F.R. § 501.3(d)(2).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ 20 C.F.R. §§ 10.606(b), 10.608 (1999).

⁷ 20 C.F.R. § 10.138(b)(2).

⁸ *Joseph W. Baxter*, 36 ECAB 228 (1984).

governmental agencies, however, are not binding on the Board.⁹ Thus, the fact that appellant was found to be totally disabled and entitled to social security benefits does not mean that she is totally disabled under the Act. The two acts have different standards of medical proof on the issue of disability.¹⁰ Therefore, the social security decision submitted by appellant has no evidentiary value in this case.¹¹

Appellant also submitted an October 21, 1996 CA-20 report from Dr. Jackson; however, the form report was cumulative of reports previously of record and considered and, therefore, it did not constitute the submission of new and relevant evidence not previously considered. The Board has held in previous cases that the submission of evidence, which repeats or duplicates evidence already in the case record, does not constitute a basis for reopening a case.¹²

In the present case, appellant has not established that the Office abused its discretion in its June 17, 1999 decision by denying her request for a review on the merits of its January 9, 1997 decision under section 8128(a) of the Act.

Appellant's request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim.

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.¹³ Appellant has made no such showing here.

⁹ Under the Act, the employee's disabling injury must be shown to be causally related to an accepted injury or factors of employment. For this reason, the determinations of other administrative agencies or courts, while sometimes instructive, are not determinative with regard to disability as defined by the Act. *See generally George A. Johnson*, 43 ECAB 712 (1992); *Constance G. Mills*, 40 ECAB 317 (1988); *Fabian W. Fraser*, 9 ECAB 367 (1957).

¹⁰ *See Daniel Deparini*, 44 ECAB 657, 660 (1993) (noting that under the Social Security Act, mental and physical conditions which are not employment related may be considered in determining disability).

¹¹ *See Paul Trotman-Hall*, 45 ECAB 229, 236 (1993); *Maximo Calderon*, 1 ECAB 117, 121 (1948) (finding that a state court judgment that appellant was the widow of the federal employee is not binding on the Board's determination of her status under the Act).

¹² *Jerome Ginsberg*, 32 ECAB 31 (1980).

¹³ *Daniel J. Perea*, 42 ECAB 214 (1990).

The decision of the Office of Workers' Compensation Programs dated June 17, 1999 is hereby affirmed.

Dated, Washington, DC
December 8, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member