

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY J. WALKER and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 98-801; Submitted on the Record;
Issued December 12, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

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.

The Board has duly reviewed the case record and finds that the Office acted within its discretion in refusing to reopen appellant's case for consideration of the merits of her claim.

The only decision before the Board on this appeal is the Office's September 23, 1997 decision denying appellant's application for a review on the merits of its January 17, 1995 decision.¹ The Board previously considered this case on its merits, and by decision issued on March 21, 1996 affirmed the January 17, 1995 and March 31, 1994 Office decisions.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 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

¹ By decision dated January 17, 1995, the Office denied merit review of its March 31, 1994 decision finding that appellant had failed to establish that she sustained an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

² Docket No. 95-1802 (issued March 21, 1996); *petition for recon. denied* (issued July 10, 1996).

³ 5 U.S.C. §§ 8101-8193.

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

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 Evidence that repeats or duplicates evidence already in the case record also has no evidentiary value and does not constitute a basis for reopening a case.⁸

By letter dated July 10, 1997, appellant requested reconsideration of the Office's January 17, 1995 decision denying merit review of its March 31, 1994 denial of her claim. In support of the request, appellant submitted copies of psychiatric treatment records which had been previously submitted to the record and considered by the Office and the Board. As these reports were duplicative of evidence previously submitted and considered, they do not constitute a basis for reopening appellant's claim for further review on its merits.⁹ Also submitted were orthopedic treatment records which are not relevant to the issue in this case. Therefore, these reports also do not constitute a basis for reopening a case for further review.¹⁰ Appellant additionally repeated arguments previously made and considered. These arguments, therefore, do not constitute a basis for reopening appellant's case for further review on its merits.¹¹

The Office properly conducted a limited review of this evidence to determine its value and relevancy in support of a request for reconsideration, and determined that it was duplicative and irrelevant, and therefore insufficient to constitute a basis for reopening appellant's case for further review on its merits. The Board now conducts its own review of the evidence and determines that the Office was correct. The Board further notes that its decisions dated July 10 and March 21, 1996 are not subject to review by the Office.¹²

In this case, appellant has not established that the Office abused its discretion in its September 23, 1997 decision by denying her request for a review on the merits of its January 17, 1995 and March 31, 1994 decisions under section 8128(a) of the Act, because she has failed to show that the Office erroneously applied or interpreted a point of law, to advance a point of law or a fact not previously considered by the Office or to submit relevant and pertinent evidence not previously considered by the Office.

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

⁹ *See supra* note 8.

¹⁰ *See supra* note 7.

¹¹ *See supra* note 8.

¹² *See* 20 C.F.R. § 501.6(c).

As the only limitation on the Office's authority is reasonableness, an abuse of discretion can generally be shown only 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.

The decision of the Office of Workers' Compensation Programs dated September 23, 1997 is hereby affirmed.

Dated, Washington, DC
December 12, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

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