

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MINDY J. CHAN and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

*Docket No. 98-966; Submitted on the Record;
Issued February 3, 2000*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained an emotional condition on August 24, 1995 causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion by denying reconsideration of appellant's claim.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the September 2, 1997 decision of the Office hearing representative is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

The Board also finds that the Office properly denied merit review. On October 8, 1997 appellant, through counsel, requested reconsideration and submitted additional evidence. In its decision dated October 20, 1997, the Office denied appellant's request, finding the evidence submitted irrelevant to the issue in this case and therefore insufficient to warrant further merit review.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ 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.² 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.³ To be entitled to merit review of an

¹ 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).

² 20 C.F.R. § 10.138(b)(1) and (2).

Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴

In the present case, appellant's emotional claim was denied on the basis that she had not substantiated a compensable factor of employment. The additional evidence appellant submitted with her request for reconsideration consists of evidence that does not address the issue in this case or is duplicative of evidence already submitted.⁵ The additional evidence was, therefore, properly found to be irrelevant and not sufficient to require reopening of appellant's case for further review of the merits of her claim pursuant to section 8128.

The Board has held that, 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 deduction from established facts.⁶ The evidence submitted with appellant's reconsideration request consists of medical reports and information regarding appellant's employment-related disability pertaining to her shoulder and neck injuries, which includes a May 3, 1996 decision of the Board wherein appellant's termination of compensation benefits was vacated.⁷ As this evidence is not relevant and pertinent to the issue in this case, it therefore is insufficient to warrant reopening appellant's claim.⁸ Also submitted were copies of appellant's Equal Employment Opportunity (EEO) complaints, motions and briefs for summary adjudication of appellant's being placed on absent without leave status, documents from the employing establishment denying appellant's request to remain on the day shift and evidence documenting the manner in which the denial of appellant's change in shifts were carried out. The Office properly found this evidence to be insufficient and immaterial to warrant reopening appellant's claim. The Board finds that the Office properly denied appellant's application for reconsideration of her claim.

³ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ The evidence submitted consists of medical reports and information regarding appellant's employment-related disability pertaining to her shoulder and neck injuries and copies of appellant's EEO complaint material and documentation which includes motions and briefs for summary adjudication of appellant's situation wherein she claimed she sustained her emotional condition.

⁶ *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁷ *See Minh Tran*, Docket No. 94-1543 (issued May 3, 1996).

⁸ 20 C.F.R. § 8128(a)(3).

The decisions of the Office of Workers' Compensation Programs dated October 20 and September 2, 1997 are hereby affirmed.

Dated, Washington, D.C.
February 3, 2000

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member