

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGIE L. RICHARDS and GENERAL SERVICES ADMINISTRATION,
Chicago, IL

*Docket No. 99-530; Submitted on the Record;
Issued January 18, 2000*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that the position of surveillance system monitor fairly and reasonably represented appellant's wage-earning capacity; and (2) whether the Office abused its discretion by denying merit review of appellant's claim.

The Board has given careful consideration to the issues involved, the contentions on appeal and the entire case record. The Board finds that the May 27, 1998 decision¹ 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.²

The Board also finds that the Office properly denied the merit review.

On August 1, 1998 appellant requested reconsideration and submitted a lengthy document in support of her request. In its decision dated August 25, 1998, the Office denied appellant's request, finding the evidence submitted cumulative and therefore insufficient to warrant merit review.

¹ The Board notes that this decision contains a typographical error on page 2 regarding the date of injury used in determining appellant's salary. The employing establishment properly provided the amount of appellant's salary on April 9, 1981, the date of injury, whereas the May 27, 1998 decision indicates that the date of injury was April 9, 1991.

² The record contains a November 21, 1997 decision in which an Office hearing representative denied appellant's request for a review of the record as being untimely filed. After demonstrating that her request had been timely filed, the Branch of Hearings and Review issued the May 27, 1998 decision. The record also contains a decision dated January 29, 1985, Docket No. 85-94, in which the Board affirmed an Office decision that appellant's hypertension and heart condition were not employment related.

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 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 To be entitled to 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.⁶

The issue in this case is whether the Office properly determined that the position of surveillance system monitor fairly and reasonably represented appellant's wage-earning capacity. With her reconsideration request, appellant presented no new evidence and merely reiterated arguments made previously. While she made a general allegation that the original determination was erroneous, she has submitted no evidence to indicate that the position does not suit her capabilities and is not reasonably available in her commuting area. Furthermore, the record does not contain evidence that she has been retrained or otherwise vocationally rehabilitated⁷ and she submitted no medical evidence to indicate that she could not perform the selected position. Consequently, the evidence submitted by appellant with her reconsideration request did not meet the requirements set forth at 20 C.F.R. § 10.138.

³ 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).

⁴ 20 C.F.R. § 10.138(b)(1) and (2).

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

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ The record indicates that appellant did not cooperate with vocational rehabilitation efforts.

The decisions of the Office of Workers' Compensation Programs dated August 25 and May 27, 1998 are hereby affirmed.

Dated, Washington, D.C.
January 18, 2000

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member