

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES D. THUNDERBIRD and DEPARTMENT OF THE AIR FORCE,
OKLAHOMA CITY AIR LOGISTICS CENTER, TINKER AIR FORCE BASE, OK

*Docket No. 99-419; Submitted on the Record;
Issued June 15, 2000*

DECISION and ORDER

Before DAVID S. GERSON, 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 his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

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 his 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 21, 1998 decision denying appellant's application for a review on the merits of its April 10, 1996 decision.¹ Because more than one year has elapsed between the issuance of the Office's April 10, 1996 merit decision and November 5, 1998, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the April 10, 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) 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

¹ By decision dated April 10, 1996, the Office denied modification of its July 6, 1995 decision denying appellant's claim for a recurrence of disability on or after January 10, 1995 to his accepted 1984 lumbar strain injury. The Board affirmed the April 10, 1996 decision on October 10, 1997, Docket No. 96-2229.

² See 20 C.F.R. § 501.3(d)(2). However, in this case the Board had previously reviewed the Office's April 10, 1996 decision in conjunction with its October 10, 1997 decision.

³ 5 U.S.C. §§ 8101-8193.

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

decision denying or terminating a benefit, a claimant also must file his 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 that repeats or duplicates evidence already in the case record has no new evidentiary value and does not constitute a basis for reopening a case.⁷ Evidence that does not address the particular issue involved also constitutes no basis for reopening a case.⁸

By letter dated August 24, 1998, appellant requested reconsideration of the April 10, 1996 decision. In support of the request, appellant submitted two 1996 reports from Dr. Marcus L. Cox, a general practitioner, which were repetitious of previously submitted and considered reports already of record. As evidence that repeats or duplicates evidence already in the case record has no new evidentiary value and does not constitute a basis for reopening a case, these reports do not warrant review of the case on its merits.

Appellant also submitted an October 23, 1996 radiographic report which did not contain any medical opinion on causal relation and therefore did not address the issue in question, such that it was irrelevant. As evidence that does not address the particular issue involved also constitutes no basis for reopening a case, this report also does not warrant review of the case on its merits.

In the present case, therefore, appellant has not established that the Office abused its discretion in its September 21, 1998 decision by denying his request for a review on the merits of its April 10, 1996 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, failed to advance a point of law or a fact not previously considered by the Office or failed to submit 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.

Consequently, the decision of the Office of Workers' Compensation Programs dated September 21, 1998 is hereby affirmed.

Dated, Washington, D.C.
June 15, 2000

⁵ 20 C.F.R. § 10.138(b)(2).

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

⁷ *Mary G. Allen*, 40 ECAB 190 (1988); *Eugene F. Butler*, 36 ECAB 393 (1984).

⁸ *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

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

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member