

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRET X. BURTNETT and U.S. POSTAL SERVICE,
POST OFFICE, Jacksonville, FL

*Docket No. 98-2491; Submitted on the Record;
Issued May 9, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for further merit review under 5 U.S.C. § 8128.

On September 20, 1996 appellant, then a 32-year-old city carrier, filed a notice of occupational disease and claim for compensation alleging that he suffered from depression and anxiety as a result of harassment at work. Appellant noted on his Form CA-1 that he first realized his emotional condition was caused by his employment on January 9, 1995. Appellant stopped work on May 5, 1996 and has not returned.¹

In an attending physician's report dated October 28, 1996, Dr. Carlos Torrellas, a Board-certified psychiatrist, noted that appellant suffered from panic disorder, major depression and anxiety. Dr. Torrellas did not indicate the etiology of appellant's emotional condition.

In a November 27, 1996 letter, the Office advised appellant of the medical and factual evidence required to establish his claim.

In a letter dated December 12, 1996, the employing establishment denied knowledge of any harassment by appellant's coworkers.

In a decision dated May 20, 1997, the Office denied appellant's claim for compensation on the grounds that the evidence of record was insufficient to establish that appellant sustained an emotional condition in the performance of duty.

On February 19, 1998 appellant requested reconsideration. Appellant submitted a handwritten statement addressing his claim and medical treatment.

¹ The record indicates that appellant had a previous claim, case number A0606-617576, for a neck and lumbar strain which was accepted by the Office. Appellant was placed on limited duty on January 10, 1995.

In a decision dated May 12, 1998, the Office denied appellant's request for further merit review.

The Board finds that the Office properly refused to reopen appellant's claim for a merit review.²

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.³ The regulations provide that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ When application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁵ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁶ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁷ Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.⁸

In the instant case, appellant has failed to show that the Office erroneously applied or interpreted a point of law, nor did he advance a point of law or a fact not previously considered by the Office. Appellant also failed to submit any new and relevant evidence on reconsideration to support his emotional condition claim. His handwritten statement merely reiterated his allegation of harassment at work. It is well established that evidence which is repetitive of that already submitted to the record does not constitute a basis for reopening a claim for further merit review. Consequently, as appellant did not comply with the requirements of regulations relevant to reconsideration under section 8128, the Board finds that the Office properly denied appellant's request for reconsideration on the merits.⁹

² The Board does not have jurisdiction to review the last merit decision of record dated December 12, 1996, as that merit decision was not issued by the Office within one year of the date appellant filed his appeal with the Board; *see* 20 C.F.R. § 10.138(b)(2).

³ 5 U.S.C. § 8128; *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁴ 20 C.F.R. § 10.138(b)(1).

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁷ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁸ *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

⁹ Although appellant submitted additional evidence on appeal, the Board does not have jurisdiction to review evidence that was not before the Office at the time it issued its final decision. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated May 12, 1998 is hereby affirmed.

Dated, Washington, D.C.
May 9, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member