

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ESTELLA L. CRAFT and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, TN

*Docket No. 99-960; Submitted on the Record;
Issued May 4, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

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 finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

On May 28, 1996 appellant, then a 40-year-old distribution clerk, filed an occupational disease claim alleging that she sustained aggravation of her preexisting asthma due to exposure to dust in her workplace. By decision dated October 15, 1996, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an employment-related aggravation of her preexisting asthma. By decision dated and finalized September 12, 1997, an Office hearing representative affirmed the Office's October 15, 1996 decision. On September 11, 1998 appellant requested reconsideration of her claim and, by decision dated October 26, 1998, the Office denied appellant's request for merit review.

The only decision before the Board on this appeal is the Office's October 26, 1998 decision denying appellant's request for a review on the merits of its September 12, 1997 decision. Because more than one year has elapsed between the issuance of the Office's September 12, 1997 decision and January 22, 1999, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the September 12, 1997 decision.¹

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provide that a claimant must:

¹ See 20 C.F.R. § 501.3(d)(2).

² 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or

(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.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file her application for review within one year of the date of that decision.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

In support of her September 11, 1998 reconsideration request, appellant submitted a September 12, 1996 report in which Dr. Johannes J. DuPlooy, an attending physician specializing in internal medicine, indicated that her asthma might be adversely affected by excessive dust or mold or extreme changes in temperature. In a report dated February 9, 1998, Dr. Belinda B. Alexander, an attending physician specializing in internal medicine, noted that appellant had been followed since 1995 for asthma. Appellant also submitted a January 17, 1997 pulmonary study and a January 6, 1998 discharge summary.

These documents, however, do not contain a clear opinion that appellant's preexisting asthma was aggravated by employment factors.⁶ Dr. DuPlooy suggested that appellant might have problems in the future, but he did not adequately discuss appellant's actual employment factors and it is well established that the possibility of future injury constitutes no basis for the payment of compensation.⁷ Therefore, these documents are not relevant to the main issue of the present case, *i.e.*, whether appellant submitted sufficient medical evidence to establish that she sustained an employment-related aggravation of her preexisting asthma. The Board has held that the submission of evidence, which does not address the particular issue involved does not constitute a basis for reopening a case.⁸

In the present case, appellant has not established that the Office abused its discretion in its October 26, 1998 decision by denying her request for a review on the merits of its September 12, 1997 decision under section 8128(a) of the Act, because she has failed to show that the Office erroneously applied or interpreted a point of law, that she advanced a point of law or a fact not previously considered by the Office or that she submitted relevant and pertinent evidence not previously considered by the Office.

against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

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

⁴ 20 C.F.R. § 10.138(b)(2).

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

⁶ *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁷ *Gaeten F. Valenza*, 39 ECAB 1349, 1356 (1988).

⁸ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decision of the Office of Workers' Compensation Programs dated October 26, 1998 is affirmed.

Dated, Washington, D.C.
May 4, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member