

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPHINA CHABRIER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, San Juan, PR

*Docket No. 99-1466; Submitted on the Record;
Issued November 8, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration on the merits pursuant to 5 U.S.C. § 8128.

On March 24, 1994 appellant, then a 32-year-old secretary, filed a notice of occupational disease and claim for compensation alleging that she sustained a depressive disorder that she attributed to her federal employment. Appellant indicated on her CA-2 form that she became aware of her condition on August 11, 1992, and that she stopped work on January 31, 1994.

In a statement attached to her CA-2 form, appellant alleged that she was under emotional stress because of constant criticism of her job performance by her supervisor. She stated that she felt constantly under watch by her supervisor, who questioned appellant's every absence from work or even her desk. Appellant further contended that her supervisor became too involved in appellant's personal affairs and tried to tell her how to handle them, thereby causing increased anxiety.

A coworker submitted a statement indicating that appellant had a nervous breakdown due to financial complications associated with her divorce. She related an incident at work when appellant became very upset because her ex-husband failed to return her children after a visit to Miami with his relatives.

In a letter dated June 7, 1994, the Office advised appellant of the factual and medical evidence required to establish her claim.

In a decision dated December 7, 1994, the Office denied compensation on the grounds that appellant failed to establish that she sustained an emotional condition in the performance of duty.

Appellant requested a hearing, which was held on March 22, 1995. In a decision dated June 1, 1995, an Office hearing representative affirmed the Office's December 7, 1994 decision.

On May 30, 1996 appellant filed a motion for reconsideration. Appellant reiterated her allegations of harassment by her supervisor and requested that the Office grant her a new hearing because she was not represented by counsel at the March 22, 1995 hearing. Appellant, however, did not submit any new evidence.

In a decision dated October 20, 1998, the Office refused to conduct a merit review and denied appellant's request for reconsideration.

The Board finds that the Office properly denied appellant's request for reconsideration on the merits under section 8128.

The only decision before the Board is the Office's October 20, 1998 decision denying appellant's request for a merit review of her claim under section 8128. Since more than one year elapsed between the date appellant filed her appeal on March 11, 1999 and the prior Office decision dated June 1, 1995, the Board lacks jurisdiction to review whether appellant established that she sustained an emotional condition in the performance of duty.¹ Rather, the issue in this appeal is limited to a review of whether appellant was entitled to reconsideration on the merits.

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.² 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.³ 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.⁴

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.⁵ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁶ 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.⁷

¹ 20 C.F.R. § 501.3(d) requires that an appeal must be filed within one year from the date of issuance of the final decision of the Office.

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

³ 20 C.F.R. § 10.138(b)(1).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁶ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁷ *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

In this case, appellant failed to submit any new evidence. She did not advance a point of law not previously considered by the Office that is relevant to the claim, nor did she show that the Office erroneously interpreted a point of law or fact. Thus, appellant did not meet the requirements of section 8128 and was not entitled to a merit review. Additionally, the Board finds nothing in the hearing transcript or the record as a whole suggesting that appellant did not obtain a fair hearing.

The decision of the Office of Workers' Compensation Programs dated October 20, 1998 is hereby affirmed.

Dated, Washington, DC
November 8, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member