

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RUTH BOLDEN and U.S. POSTAL SERVICE,  
POST OFFICE, North Suburban, IL

*Docket No. 99-2538; Submitted on the Record;  
Issued November 27, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for review on the merits pursuant to 5 U.S.C. § 8128(a) of the Federal Employee's Compensation Act.

This is the second time this case has been on appeal. In a June 4, 1998 decision, the Board found that appellant did not sustain a recurrence of disability on and after March 28, 1986 causally related to her accepted employment-related condition of hamstring tendinitis of the right knee.<sup>1</sup>

Following issuance of the Board's decision, appellant requested reconsideration of her claim by the Office on May 14, 1999. The Office received her reconsideration request on May 18, 1999. Appellant submitted no additional medical evidence to support her request; however, she contended that new evidence would be forthcoming. The Office did not receive any additional evidence. By decision dated June 1, 1999, the Office denied appellant's request, finding that her letter neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant merit review.

Under section 8128(a) of the Act,<sup>2</sup> the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,<sup>3</sup> which provides that a claimant may obtain review of the merits if her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

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<sup>1</sup> A complete procedural history is set forth in the Board's June 4, 1998 decision. Docket No. 96-1424 (issued June 4, 1998).

<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.606(b) (1999).

“(i) Shows that the Office erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the Office; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the Office.”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>4</sup> If a claimant fails to submit relevant evidence not previously of record or advance legal contentions or facts not previously considered, the Office has the discretion to refuse to reopen a case for further consideration of the merits pursuant to section 8128.<sup>5</sup>

In this case, appellant’s recurrence claim was denied on the basis that the evidence of record did not contain the necessary rationalized medical evidence to establish a recurrence of disability on and after March 28, 1986 due to the September 4, 1984 accepted employment injury. Although she asserted that new evidence would be submitted with her request for reconsideration, none was received. Appellant’s reconsideration request did not provide new factual evidence, legal evidence or medical evidence that she sustained a recurrence causally related to her accepted employment-related condition. Generally, an abuse of discretion is 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.<sup>6</sup> The Office did not abuse its discretion in denying a merit review in this case.

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<sup>4</sup> 20 C.F.R. § 10.608(b).

<sup>5</sup> *John E. Watson*, 44 ECAB 612, 614 (1993).

<sup>6</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The decision of the Office of Workers' Compensation Programs dated June 1, 1999 is hereby affirmed.

Dated, Washington, DC  
November 27, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Valerie D. Evans-Harrell  
Alternate Member