

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY A. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Savannah, GA

*Docket No. 99-430; Submitted on the Record;
Issued October 13, 2000*

DECISION and ORDER

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

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 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 her 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 October 21, 1998 decision denying appellant's application for a review on the merits of its September 30, 1997 decision.¹ Because more than one year has elapsed between the issuance of the Office's September 30, 1997 merit decision and November 10, 1998, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the September 30, 1997 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

¹ By decision dated September 30, 1997, the hearing representative affirmed the May 16, 1996, Office decision which terminated appellant's compensation entitlement finding that she had no further disability causally related to her October 11, 1990 cervical soft tissue muscular strain injury.

² See 20 C.F.R. § 501.3(d)(2).

³ 5 U.S.C. §§ 8101-8193.

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

an Office decision denying or terminating a benefit, a claimant also must file his or her 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 which does not address the particular issue involved is irrelevant and, therefore, does not constitute a basis for reopening a case.⁷

By letter dated September 21, 1998, appellant, through her representative, requested reconsideration of the Office's September 30, 1997 decision affirming a prior termination of her compensation entitlement. In support of the request, appellant's representative submitted a Social Security Administration (SSA) Notice of Award for disability. Also submitted was a January 30, 1998 report to the SSA from Dr. Marc W. Eaton, a clinical psychologist, which noted appellant's complaints of chronic pain which prevented her from sitting or standing for any length of time. Dr. Eaton diagnosed, "Pain disorder associated both with psychological factors and a general medical condition, chronic, personality traits or coping style affecting medical condition, [and] adjustment disorder with anxiety, mild," but he in no way related these findings to appellant's accepted employment injury. Additionally appellant submitted a February 2, 1998 report to the SSA from Dr. Stephen G. Pappas, a Board-certified neurologist, which noted normal cervical radiographic findings and lack of significant cervical tenderness and which diagnosed a relatively severe fibromyalgia with associated depression. The report did not relate this condition to the accepted 1990 cervical soft tissue muscular strain injury. Further, submitted was a February 9, 1998 report to the SSA from Dr. Michael J. O'Connell, a Board-certified orthopedic surgeon, which discussed appellant's low back pain and bilateral leg symptomatology, her upper extremity pain, and numbness, carpal tunnel syndrome, her occipital headaches and her psychiatric condition, none of which were accepted by the Office as being employment-related conditions and which diagnosed "nonoperative failed back syndrome," and possible fibromyalgia with psychogenic problems. No continuing disability causally related to the accepted cervical soft tissue muscular strain injury was identified. The Office properly conducted a limited review of this evidence to determine its relevancy in support of a request for reconsideration, and determined that it was irrelevant, as SSA determinations are not determinative of disability under the Act,⁸ and as none of these physicians identified continuing disability causally related to appellant's accepted 1990 cervical soft tissue muscular strain injury, hence these reports were insufficient to constitute a basis for reopening appellant's case for a further review on its merits.

In the present case, appellant has not established that the Office abused its discretion in its October 21, 1998 decision, by denying her request for a review on the merits of its September 30, 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, failed to advance a point of law or a fact

⁵ 20 C.F.R. § 10.138(b)(2).

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

⁷ *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 228 (1984).

⁸ *See Daniel Deparini*, 44 ECAB 657 (1993); *John P. Hurley*, 34 ECAB 494 (1982).

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 October 21, 1998 is hereby affirmed.

Dated, Washington, DC
October 13, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

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