

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KIM DOAN DANG and DEPARTMENT OF THE NAVY,
NAVAL AIR SYSTEMS COMMAND, Point Mugu, CA

*Docket No. 00-2275; Submitted on the Record;
Issued August 8, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained an emotional condition while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for further consideration of her case on its merits under 5 U.S.C. § 8128(a).

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the April 10, 2000 decision of the Office hearing representative is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

On April 19, 2000 appellant requested reconsideration and submitted medical reports dated October 21 and November 5, 1999 from Dr. Stanley L. Goodman, a Board-certified psychiatrist; a statement from Joan Gusman, a complaints investigator; and an Equal Employment Opportunity (EEO) report, in which the counselor noted that she was unsuccessful in resolving discrimination issues.

In an April 3, 2000 statement received by the Office on April 24, 2000, appellant claimed that she was tasked with additional workload, that when Calvin Hiyashi left she was performing more work in comparison to other engineers in her work group and that Mr. Hiyashi left because he was embarrassed by his inability to do the assigned job. Appellant listed her job accomplishments and claimed that in addition to her own "full heavy workload" she was tasked with assignments that Mr. Hiyashi had failed to do.

By decision dated May 30, 2000, the Office denied reconsideration on the grounds that the evidence submitted in support was repetitious and thus insufficient to warrant a reopening of the case for further review on its merits.

The Board finds that the Office acted within its discretion in refusing to reopen appellant's case for further consideration of the merits of her claim.

The Federal Employees' Compensation Act¹ provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. Section 10.605 of the implementing regulations² provides that the Director may review an award for or against compensation upon application by an employee, or his or her representative, who receives an adverse decision. The employee shall exercise this right through a request to the District Office. Office procedures pertaining to the requirements for obtaining a review of a case on its merits under 5 U.S.C. § 8128(a), state as follows:

“(b) The application for reconsideration, including all supporting documents, must:

- (1) Be submitted in writing;
- (2) Set forth arguments and contain evidence that either:
 - (i) Shows that [the Office] erroneously applied or interpreted a specific point of law;
 - (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].”³

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.”⁴

In support of her reconsideration request, appellant argued that she had responded to the employing establishment's comments by letter dated April 3, 2000 and that she had sent the response to both the Office hearing representative and the employing establishment. Appellant argued that she had accomplished additional tasks beyond those originally assigned, that she had more than a full heavy workload and that she was given Mr. Hiyashi's assignments. However, none of these arguments was factually corroborated and all of these arguments had been previously made and considered by the Office. Therefore, they did not constitute relevant legal argument not previously considered.

Appellant also submitted medical reports dated October 21 and November 5, 1999 from Dr. Goodman, a statement from Ms. Gusman and an EEO counselor's report from Ms. Cilley. This evidence had all been previously submitted to the Office and considered by the hearing

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.605.

³ 20 C.F.R. § 10.606 (b)(1),(2).

⁴ See *Mohamed Yunis*, 46 ECAB 827 (1995); *Elizabeth Pinero*, 46 ECAB 123 (1994); *Joseph W. Baxter*, 36 ECAB 228 (1984).

representative. Therefore, none of it constituted relevant or pertinent new medical evidence not previously considered.

As none of the evidence submitted in support of appellant's request for reconsideration of the April 10, 2000 and August 13, 1999 merit decisions constituted a basis for reopening the claim for further merit review, the Office properly denied appellant's application.

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.⁵ Appellant has made no such showing here.

The May 30 and April 10, 2000 and August 13, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
August 8, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁵ *Daniel J. Perea*, 42 ECAB 214 (1990).