

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES McMICHAEL and U.S. POSTAL SERVICE,
CHICAGO CENTRAL FACILITY, Chicago, IL

*Docket No. 00-2744; Submitted on the Record;
Issued August 3, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying merit review of appellant's claim.

On March 4, 1998 appellant, then a 59-year-old mailhandler, filed an occupational disease claim (Form CA-2) alleging that on November 24, 1997 he first became aware of his stress, depression and anxiety condition and that he first became aware on January 28, 1998 that it was related to factors of his employment.¹ Specifically, appellant alleged his condition was due to the employing establishment's refusal to accommodate his medical restrictions since November 24, 1997 and had been instructed to go home each day.

By decision dated October 1, 1998, the Office denied his claim on the basis that he failed to establish that his injury was sustained in the performance of duty.

On September 10, 1999 appellant filed a request for reconsideration alleging that his case began on January 6, 1988 not November 24, 1997, that the employing establishment failed to provide him with an ergonomic chair and that he lost approximately 418 hours of leave without pay during the period 1988 through 1997.² In support of his request, appellant submitted a December 4, 1995 Office letter that accepted permanent aggravation of degenerative joint disease of the lumbar spine on his claim number A10-441737 and a September 3, 1999 discrimination complaint.

By nonmerit decision dated December 14, 1999, the Office denied his reconsideration request.

¹ This was assigned claim number A10-475877.

² Appellant had previously filed a claim which the Office accepted and assigned claim number A10-441737.

The Board finds that the Office did not abuse its discretion by denying merit review of appellant's claim

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his request for appeal on August 30, 2000, the only decision before the Board is the December 14, 1999 nonmerit decision denying appellant's application for review. The Board has no jurisdiction to review the most recent merit decision of record dated October 1, 1998.

Under section 8128(a) of the Federal Employees' Compensation Act,³ 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,⁴ 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:

“(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.⁵

In the instant case, the Office denied appellant's claim on the basis that he had not substantiated a compensable factor of employment to establish an emotional condition sustained in the performance of duty or due to employment factors alleged by appellant. The additional evidence appellant submitted with his September 10, 1999 reconsideration request consists of evidence that does not address the issue in this case. The additional evidence was, therefore, properly found to be irrelevant and not sufficient to require the opening of appellant's case for further review of the merits of his claim pursuant to section 8128.

Further, appellant has not established that the Office abused its discretion in its December 14, 1999 decision by denying his request for a review on the merits of its October 1, 1998 decision, under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, failed to advance a point of law not previously

³ 5 U.S.C § 8128(a).

⁴ 20 C.F.R. § 10.606(b) (1999).

⁵ 20 C.F.R. § 10.608(b).

considered by the Office and 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 be shown only 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.⁶ Appellant has made no such showing here.

The decision of the Office of Workers' Compensation Programs dated December 14, 1999 is hereby affirmed.

Dated, Washington, DC
August 3, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁶ *Daniel J. Perea*, 42 ECAB 214 (1990).