

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARA SMALLS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Pittsburgh, PA

*Docket No. 01-419; Submitted on the Record;
Issued July 11, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

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

On June 10, 1996 appellant, then a 52-year-old former nursing assistant, filed an occupational disease claim alleging that she sustained head pain, musculoskeletal damage to her back, shoulder and neck, osteoarthritis and epicondylitis of the left arm causally related to factors of her federal employment. Appellant related that she initially became aware of her condition on March 3, 1993.¹ The Office accepted appellant's claim for aggravation of preexisting degenerative disc disease at L5-S1. Appellant filed a claim for compensation beginning March 11, 1994.

By decision dated October 9, 1998, the Office found that the evidence was insufficient to establish that she sustained a recurrence of disability beginning March 11, 1994 causally related to her accepted employment injury.

Appellant requested a hearing before an Office hearing representative. In a decision dated August 10, 1999 and finalized August 12, 1999, the hearing representative affirmed the Office's October 9, 1998 decision.

In a letter received by the Office on August 10, 2000, appellant requested reconsideration of her claim. In a decision dated November 8, 2000, the Office denied merit review of its prior decision.

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration under section 8128.

¹ The record indicates that appellant retired on disability from the employing establishment in 1994.

The only decision over which the Board has jurisdiction is the November 8, 2000 decision denying appellant's request for a review of the merits of the case. Because more than one year has elapsed between the issuance of the Office's decision finalized August 12, 1999 and November 28, 2000, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the decision finalized August 12, 1999.²

Section 10.606 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.³ Section 10.608 provides that, when an 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

In support of her request for reconsideration, appellant resubmitted a medical report dated June 7, 1999 from Dr. Marcia R. Nisenbaum, a Board-certified internist and her attending physician. As this evidence duplicated evidence already in the record, it is insufficient to warrant reopening appellant's claim.⁵

Appellant further submitted records regarding her hospitalization on May 31, 2000 for a decompressive lumbar laminectomy at L4-5 and her subsequent stay in a rehabilitation hospital. She also submitted a magnetic resonance imaging study dated August 3, 2000 which was interpreted as showing a spondylolisthesis at L4-5. However, the hospital records do not address the cause of appellant's condition. The relevant issue in this case is whether appellant had any disability beginning March 1994 causally related to her accepted employment injury of an aggravation of preexisting degenerative disc disease at L5-S1. Evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁶

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 known facts.⁷ Appellant has made no such showing here and thus the Board finds that the Office properly denied her application for reconsideration of her claim.

² See 20 C.F.R. §§ 501.2(c), 501.3(d).

³ 20 C.F.R. § 10.606(b)(2).

⁴ 20 C.F.R. § 10.608(b).

⁵ *Id.*

⁶ See *Dominic E. Coppo*, 44 ECAB 484 (1993).

⁷ *Rebel L. Cantrell*, 44 ECAB 660 (1993).

The decision of the Office of Workers' Compensation Programs dated November 8, 2000 is hereby affirmed.

Dated, Washington, DC
July 11, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member