

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BARBARA J. ALLEN and U.S. POSTAL SERVICE,  
POST OFFICE, Anchorage, AL

*Docket No. 00-51; Submitted on the Record;  
Issued June 25, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

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 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.

In April 1994 the Office accepted that appellant, then a 38-year-old mailhandler, sustained bilateral extensor wrist tendinitis due to work factors. The Office later accepted that appellant sustained employment-related left de Quervain's tenosynovitis. Appellant received Office compensation for various periods of disability. In late 1993 appellant began working in a modified general clerk position for the employing establishment, a position which resulted in no wage loss from her date-of-injury position.<sup>1</sup> Effective April 30, 1996, the employing establishment placed appellant off-duty in order to investigate her claims that the modified general clerk position threatened her health and safety. Appellant alleged that she was entitled to wage-loss compensation on and after April 30, 1996. By decision dated March 14, 1997, the Office denied appellant's claim on the grounds that the modified general clerk position fairly and reasonably represented her wage-earning capacity and that she was not entitled to wage-loss compensation on and after April 30, 1996. By decision dated April 27, 1998, the Office affirmed its March 14, 1998 decision and, by decision dated May 21, 1999, the Office denied appellant's request for merit review.

The only decision before the Board on this appeal is the Office's May 21, 1999 decision denying appellant's request for a review on the merits of its April 27, 1998 decision. Because

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<sup>1</sup> The position limited lifting to 20 pounds and placed restrictions on various activities including reaching above the shoulders.

more than one year has elapsed between the issuance of the Office's April 27, 1998 decision and August 23, 1999, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the April 27, 1998 decision.<sup>2</sup>

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>3</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.<sup>4</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.<sup>5</sup> When a claimant fails to meet one of the above 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.<sup>6</sup>

In connection with her April 1999 reconsideration request, appellant argued that she was entitled to wage-loss compensation on and after April 30, 1996 because the employing establishment withdrew her modified general clerk position and she had been required to perform "additional duties" outside her work restrictions. However, the record reflects that appellant had previously raised these arguments and the Office had rejected them. The Board has held that the submission of evidence, which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>7</sup>

Appellant submitted an April 18, 1997 witness statement of a compensation specialist for the employing establishment, which was made in connection with a Merit Systems Protection Board (MSPB) proceeding. This statement is not relevant to the main issue of the present case in that the witness testified that appellant was not required to work outside the restrictions of her limited-duty position. The Board has held that the submission of evidence, which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>8</sup> Moreover, the Office had previously considered the April 22, 1998 decision of the MSPB on the matter and determined that it did not support appellant's claim.<sup>9</sup>

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<sup>2</sup> See 20 C.F.R. § 501.3(d)(2).

<sup>3</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. §§ 10.606(b)(2).

<sup>5</sup> 20 C.F.R. § 10.607(a).

<sup>6</sup> *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

<sup>7</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

<sup>8</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>9</sup> The MSPB had determined that appellant was not required to work outside her restrictions and that the employing establishment did not withdraw her limited-duty position effective April 30, 1996 when it placed her off duty due to health and safety concerns.

Appellant submitted a March 28, 1997 report of Dr. Rebecca White, an attending Board-certified family practitioner, and April 11, 1997 testimony of Dr. White, made in connection with the MSPB proceeding, which contained a similar opinion. In both documents, Dr. White indicated that appellant's "additional duties" caused her de Quervain's tenosynovitis to worsen. However, these documents are not relevant to the main issue of the present case because they do not contain a clear opinion that appellant could not perform her limited-duty position on or after April 30, 1996. Appellant also submitted medical notes from late 1997 but these had previously been submitted and considered by the Office.

In the present case, appellant has not established that the Office abused its discretion in its May 21, 1999 decision by denying her request for a review on the merits of its April 27, 1998 decision under section 8128(a) of the Act, because she did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office.

The May 21, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
June 25, 2001

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member