

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS A. CHAPMAN and TENNESEE VALLEY AUTHORITY,
WORKERS' COMPENSATION & REHABILITATION, Chattanooga, TN

*Docket No. 00-1204; Submitted on the Record;
Issued June 20, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
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 his 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 his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

This case is on appeal to the Board for the second time. In a decision dated November 6, 1998, the Board adopted the findings and conclusions of the Office hearing representative and affirmed the Office's July 26, 1996 decision.

By letter dated October 1, 1999, appellant requested reconsideration of the Office's decision and submitted additional evidence. The evidence included a copy of the Board's decision, a form dated March 10, 1975, "report of separation from active duty," a report from an audiologist, Sharon Riddle, dated May 5, 1998, addressing appellant's need for hearing aids but not when in a noisy environment and letters of reference, recommendations or praise for appellant's work performance and a certificate of achievement. In notes, apparently written by appellant, on the employing establishment's documents addressing his termination, appellant indicated that contrary to the employing establishment's opinion that he was denied security clearance based on his reliability, stability and judgment or that he was terminated due to positive drug and alcohol tests, he was "railroaded" or "framed" because of his disabilities.

Appellant submitted a letter dated January 29, 1993 from the psychologist, Dr. Thomas E. Sajwaj, which informed appellant that the results of his recent psychological evaluation raised concerns about his reliability, stability and/or judgment and that pursuant to his recommendation, the employing establishment's medical examiner denied him medical clearance for security officer duty.

By decision dated January 6, 2000, the Office denied appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).²

With the exception of the January 29, 1993 letter from the employing establishment informing appellant of the results of his most recent psychological evaluation and the letters and certificate praising appellant's work performance, all the evidence appellant submitted was previously in the record. However, the January 29, 1993 letter and the letters and certificate praising appellant's work performance are not relevant to the substantive issues of whether appellant sustained a loss of wage-earning capacity due to his work-related hearing loss and whether he sustained an emotional condition arising out of factors of his federal employment.

Since appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or submit relevant and pertinent new evidence not previously considered by the Office, the Office did not abuse its discretion in denying merit review of the claim.

¹ Section 10.606(b)(2)(i-iii).

² Section 10.608(a).

The decision of the Office of Workers' Compensation Programs dated January 6, 2000 is affirmed.

Dated, Washington, DC
June 20, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member