

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES SNEDDEN, JR. and DEPARTMENT OF THE AIR FORCE,
AEROSPACE GUIDANCE & METROLOGY CENTER, NEWARK AIR
FORCE BASE, OH

*Docket No. 00-2103; Submitted on the Record;
Issued June 5, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

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.

This is the third appeal in this case. Previously, the Board affirmed the July 13, 1993 decision of the Office¹ on the grounds that appellant did not submit sufficient medical evidence to establish that he had residuals of his employment injury, chemical allergic reaction, after December 20, 1990.² In the second appeal, the Board affirmed the December 17, 1996 decision of the Office³ on the grounds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim did not constitute an abuse of discretion. The facts and circumstances of the case up to that point are set forth in the Board's prior decisions and are incorporated herein by reference.

In February 2000, appellant submitted additional evidence and requested reconsideration of his claim. By decision dated February 14, 2000, the Office denied appellant's request for merit review.

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

¹ Docket No. 93-2414 (issued April 24, 1995).

² In March 1991 appellant, then a 44-year-old former instrument worker, claimed that he sustained an allergic reaction to cleaning materials at work.

³ Docket No. 97-1022 (issued March 4, 1999).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁴ 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.⁵ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file his application for review within one year of the date of that decision.⁶ 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.⁷

In support of his February 2000 reconsideration request, appellant submitted copies of billing records for his medical treatment between 1993 and 1999. This nonmedical evidence does not relate to the main issue in this case, whether the medical evidence establishes that appellant had residuals of his employment injury, chemical allergic reaction, after December 20, 1990. 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.⁸

Appellant has not established that the Office abused its discretion in its February 14, 2000 decision by denying his request for a review under section 8128(a) of the Act, because he 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.

⁴ 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 his own motion or on application." 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. §§ 10.606(b)(2).

⁶ 20 C.F.R. § 10.607(a).

⁷ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁸ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The February 14, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
June 5, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member