

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. SHEESLEY and U.S. POSTAL SERVICE,
GENERAL MAIL FACILTIY, Capitol Heights, MD

*Docket No. 00-2268; Submitted on the Record;
Issued May 16, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

The only Office decision before the Board on this appeal is the Office's March 28, 2000 decision finding that appellant's application for review was not sufficient to warrant review of its prior decision. Since more than one year elapsed between the date of the Office's most recent merit decision on February 2, 1999 and the filing of appellant's appeal on July 7, 2000, the Board lacks jurisdiction to review the merits of appellant's claim.¹

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) 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

¹ 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed.

merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.²

In this case, an Office hearing representative, by decision dated February 2, 1999, found that the evidence failed to support that appellant suffered from residual disability for all work as a result of her July 3, 1993 employment injury. By letter dated February 2, 2000, appellant requested reconsideration, contending that the Office did not correctly interpret the medical evidence and that greater weight should have been afforded to the opinion of her attending physician. Appellant submitted copies of the reports of an Office referral physician and of the office notes of her attending physician.

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

Appellant's February 2, 2000 request for reconsideration does not show that the Office erroneously applied or interpreted a specific point of law, nor does it advance a relevant legal argument not previously considered by the Office. All the evidence appellant submitted with this request for reconsideration was already contained in the case record before the Office hearing representative's February 2, 1999 decision. Although the case record contains office notes from appellant's attending physician dated September 29 and June 30, 1999 that were not considered by the Office in its February 2, 1999 decision, these notes are essentially the same as the other office notes from this physician, and do not directly address the determinative issue of continuing disability causally related to appellant's July 3, 1993 employment injury. Appellant has not met any of the criteria that would require the Office to reopen her case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

The decision of the Office of Workers' Compensation Programs dated March 28, 2000 is affirmed.

Dated, Washington, DC
May 16, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

² *Eugene F. Butler*, 36 ECAB 393 (1984).