

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH E. DALY and U.S. POSTAL SERVICE,
POST OFFICE, Wakefield, RI

*Docket No. 01-681; Submitted on the Record;
Issued September 20, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained an emotional condition while in the performance of duty; and (2) 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 finds that the decision of the hearing representative of the Office dated and finalized April 11, 2000 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.¹

The Board further 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.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² 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

¹ In July 1999, appellant, then a 54-year old custodian, filed a claim alleging that he sustained an emotional condition due to various conditions and factors at work. By decision dated November 22, 1999, the Office denied appellant's claim on the grounds that he did not establish any compensable employment factors. By decision dated April 11, 2000, an Office hearing representative affirmed the Office's November 22, 1999 decision. The Office hearing representative modified the Office's prior decision to reflect that appellant had established an employment factor with respect to the increased work he had to perform when he began working in a larger building. The Office hearing representative further determined, however, that appellant did not submit sufficient medical evidence to establish that he sustained an emotional condition due to this accepted employment factor. By decision dated December 27, 2000, the Office denied appellant's request for merit review.

² 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).

pertinent new evidence not previously considered by the Office.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.⁴ 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.⁵

In support of his reconsideration request, appellant argued that his stress was due to “the fear I have of the postal managers I have to work for and the volume of work for which I am responsible each day.” However, this statement is similar to those that appellant previously submitted and does not require reopening of his claim for merit review. 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.⁶

Appellant also submitted a June 15, 2000 report of an attending registered nurse. However, this report does not constitute medical evidence⁷ and therefore is not relevant to the main issue of the case, whether appellant submitted sufficient medical evidence to establish that he sustained an emotional condition due to the accepted employment factor of increased work. 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

³ 20 C.F.R. §§ 10.606(b)(2).

⁴ 20 C.F.R. § 10.607(a).

⁵ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

⁷ As causal relationship is a medical question that can only be resolved by medical opinion evidence, the reports of a nonphysician cannot be considered by the Board in adjudicating that issue. *Arnold A. Alley*, 44 ECAB 912, 920-21 (1993).

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

The December 27 and April 11, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
September 20, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member