

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NEVADA P. DYER and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Sugarland, TX

*Docket No. 01-965; Submitted on the Record;
Issued April 2, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
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.

On June 1, 1998 appellant, then a 50-year-old full-time city carrier, filed a notice of occupational disease and claim for compensation alleging that "stress caused by my job has me in fear of a total mental breakdown and has me unable to fulfill the physical and mental requirements of the [employing establishment] due to the stress I [a]m under." The employing establishment controverted the claim.

In a decision dated February 26, 1999, the Office denied appellant's claim for compensation, finding that the evidence failed to establish that her condition arose in the performance of her federal duties.

By letter dated June 21, 1999, appellant requested reconsideration.

By decision dated November 8, 1999, the Office reviewed appellant's case on the merits, but found that the evidence was not sufficient to warrant modification of the prior decision.

By letter dated June 1, 2000, appellant again requested reconsideration. In support of her request, she submitted a decision dated April 15, 1994 by the U.S. Equal Employment Opportunity Commission, a letter from the Office of Personnel Management dated July 27, 1999, approving appellant's application for disability retirement, a copy of a page from the Federal Procedure Manual regarding horseplay, a medical report by Dr. Wayne F. Keller, a psychiatrist and appellant's statement dated August 2, 1992.

By decision dated November 3, 2000, the Office denied appellant's request, finding that the new evidence submitted by appellant in support of her reconsideration request was not sufficient to require merit review of the case.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.¹ Since appellant filed her appeal on January 17, 2001, the only decision over which the Board has jurisdiction on this appeal is the November 3, 2000 decision denying reconsideration.²

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ the Office regulations provide that a claimant may obtain review of the merits of the claim by submitting evidence and argument that: (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.⁴ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.

In this case, appellant has not raised any new arguments that the Office erroneously applied or interpreted a point of law. Nor has appellant submitted any new relevant and pertinent evidence not previously considered by the Office. Appellant's statement is repetitive of arguments already made. As appellant's claim was denied for failure to establish a compensable factor of employment, it is not necessary to consider the opinion of Dr. Keller as his opinion is not relevant to the issue at hand, *i.e.*, whether appellant sustained a compensable factor of employment. The remaining evidence, *i.e.*, the decisions of other agencies on appellant's respective claims, are not relevant as decisions of a different federal agency under its rules and regulations is not determinative of claimant's entitlement to compensation under the Act.⁵

Therefore, appellant has not established that the Office abused its discretion in denying appellant's request for review on the merits under section 8128(a) of the Act.

¹ See 20 C.F.R. § 501.3(d)(2).

² See *Jacqueline M. Nixon-Steward*, 52 ECAB ____ (Docket No. 99-1345, issued November 3, 2000).

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Harrison Combs, Jr.*, 45 ECAB 716, 727 n. 3 (1994).

The decision of the Office of Workers' Compensation Programs dated November 3, 2000 is hereby affirmed.

Dated, Washington, DC
April 2, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member