

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL E. HILL and U.S. POSTAL SERVICE,
POST OFFICE, Daytona Beach, FL

*Docket No. 01-129; Submitted on the Record;
Issued December 5, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, 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.

The Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The only decision before the Board on this appeal is the Office's September 14, 2000 decision denying appellant's request for a review on the merits of its September 3, 1999 decision. Because more than one year has elapsed between the issuance of the Office's September 3, 1999 decision and October 13, 2000, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the September 3, 1999 decision.¹

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 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 or her application for review within one year of the date of that decision.⁴ When a claimant fails to

¹ See 20 C.F.R. § 501.3(d)(2).

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).

³ 20 C.F.R. §§ 10.606(b)(2).

⁴ 20 C.F.R. § 10.607(a).

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

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

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.⁷

While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁸

In the present case, the evidence appellant submitted with his reconsideration request, a February 14, 1996 witness statement by Randy Stewart, a March 4, 1996 statement by Dr. Alyn Beneztte and a January 3, 1997 report by Cindy Goldberg Newman, was already part of the record. Thus, appellant has not established that the Office abused its discretion in its September 14, 2000 decision by denying her request for a review on the merits of its September 3, 1999 decision 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.

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

⁸ *John F. Critz*, 44 ECAB 788, 794 (1993).

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

Dated, Washington, DC
December 5, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member