

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIS CLEMMONS and U.S. POSTAL SERVICE,  
POST OFFICE, Birmingham, AL

*Docket No. 01-1472; Submitted on the Record;  
Issued July 23, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretion to reopen appellant's case for further consideration of the merits of his claim.

The only decision before the Board on this appeal is the Office's February 12, 2001 decision denying appellant's application for a review on the merits of its February 4, 2000 decision. Because more than one year has elapsed between the issuance of the Office's February 4, 2000 merit decision and May 11, 2001, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the February 4, 2000 merit decision.<sup>1</sup>

Section 8128(a) of the Federal Employees' Compensation Act<sup>2</sup> 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 or her 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.”

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<sup>1</sup> See 20 C.F.R. § 501.3(d)(2).

<sup>2</sup> 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.606(b)(2) (1999), a claimant may obtain review of the merits of the claim by submitting evidence and argument: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>3</sup> If a claimant fails to submit relevant evidence not previously of record or advance legal contentions or facts not previously considered, the Office has the discretion to refuse to reopen a case for further consideration of the merits pursuant to section 8128.<sup>4</sup> The submission of evidence, which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>5</sup>

In the present case, appellant's claim for compensation for an emotional condition was denied on the basis that he failed to establish a compensable employment factor under the Act and, therefore, had not met his burden of proof. With his reconsideration request of January 16, 2001, appellant's representative submitted additional evidence. However, such evidence is insufficient to require reopening of appellant's case for further review of the merits of his claim as it is irrelevant, immaterial or duplicative of evidence already within the case record.

Appellant's representative indicated that, since the denial of appellant's claim on February 7, 2000, they had taken the sworn depositions of appellant's treating physicians in a related manner and enclosed the copies of the depositions. She argued that this testimony along with the previously submitted evidence<sup>6</sup> demonstrated that appellant's physical and emotional condition was related to his employment. The Board has held that the submission of evidence which does not address the particular issue involved is of little probative value.<sup>7</sup> In this case, as appellant failed to establish a compensable factor of employment and, thus, failed to establish that he sustained an emotional condition in the performance of duty, the medical evidence is not relevant for consideration at this time.

In the present case, appellant has not established that the Office abused its discretion in its February 12, 2001 decision by denying his request for a review on the merits of its February 4, 2000 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, failed to advance a point of law or a fact not previously considered by the Office or failed to submit relevant and pertinent evidence not previously considered by the Office.

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<sup>3</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>4</sup> *John E. Watson*, 44 ECAB 612, 614 (1993).

<sup>5</sup> *Jerome Ginsberg*, 32 ECAB 31 (1980).

<sup>6</sup> *See Eugene F. Butler*, 36 ECAB 393, 398 (1984) (where the Board held that material which is repetitious or duplicative of that already in the case record is of no evidentiary value in establishing a claim and does not constitute a basis for reopening a case).

<sup>7</sup> *John E. Watson*, 44 ECAB 612, 614 (1993).

As the only limitation on the Office's authority is reasonableness, an abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.<sup>8</sup> Appellant has made no such showing here.

The February 12, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
July 23, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>8</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).