

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA F. ADAMS and U.S. POSTAL SERVICE,
VEHICLE MAINTENANCE FACILITY, Oakland, CA

*Docket No. 00-2507; Submitted on the Record;
Issued March 18, 2002*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs' refusal to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

On February 11, 1996 appellant, then a 42-year-old former garageman, filed an occupational disease claim, alleging that factors of employment caused neck pain radiating to her shoulders and anxiety and post-traumatic stress disorder.¹ She had been terminated by the employing establishment on September 24, 1995. By decision dated June 2, 1998,² the Office denied the claim, finding that appellant failed to establish that her condition occurred in the performance of duty. On May 24, 1999 she requested reconsideration and submitted additional evidence. In a July 7, 1999 decision, the Office denied modification of the prior decision. On April 4, 2000 appellant again requested reconsideration and submitted a medical report from Dr. Joseph M. Pazdernik, a clinical psychologist, dated March 10, 1998. By decision dated May 31, 2000, the Office denied appellant's reconsideration request, finding the evidence submitted immaterial to the issue of whether she sustained an injury in the performance of duty. The instant appeal follows.

¹ The record indicates that appellant has three other claims before the Office: (1) In a claim adjudicated by the Office under file number 13-0981152, the Office accepted that appellant sustained a cervical strain and consequential post-traumatic stress disorder. In a May 26, 1994 decision, the Office found that her disability had ceased; (2) The Office denied a second claim that appellant sustained employment-related stress. This claim was adjudicated by the Office under file number 13-1047366, and by decision dated June 14, 1996, an Office hearing representative affirmed the denial; and (3) Under file number 13-1054951, the Office denied appellant's claim that she sustained an emotional condition regarding an August 17, 1994 employment incident. In a January 17, 1996 decision, an Office hearing representative affirmed the denial. The instant claim was adjudicated by the Office under file number 13-1151042. All claims have been doubled with the instant claim being the master file.

² This decision was initially issued on February 10, 1998 but was returned to the Office as undeliverable. Upon ascertaining appellant's new address, the decision was reissued on June 2, 1998.

The Board finds that the Office did not abuse its discretion in denying appellant's request for review.

The only decision before the Board in this appeal is the decision of the Office dated May 31, 2000 denying appellant's application for review. Since more than one year had elapsed between the date of the Office's most recent merit decision dated July 7, 1999 and the filing of appellant's appeal on July 21, 2000, the Board lacks jurisdiction to review the merits of her claim.³

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).⁴ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.⁵ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁶

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.⁷ In this case, with her request for reconsideration appellant submitted a medical report from Dr. Pazdernik, a clinical psychologist, who performed an evaluation on February 27, 1998 regarding appellant's social security disability claim. The Office, however, denied appellant's claim on the grounds that she failed to establish that she sustained an injury in the performance of duty. In a case such as this, medical evidence is irrelevant inasmuch as appellant has failed to establish a compensable employment factor.⁸ The Board has held that evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁹ The Office, therefore, properly denied appellant's request for reconsideration.

³ 20 C.F.R. § 501.3(d)(2).

⁴ 20 C.F.R. § 10.608(a) (1999).

⁵ 20 C.F.R. § 10.608(b)(1) and (2) (1999).

⁶ 20 C.F.R. § 10.608(b) (1999).

⁷ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁸ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁹ *Alton L. Vann*, 48 ECAB 259 (1996).

The decision of the Office of Workers' Compensation Programs dated May 31, 2000 is hereby affirmed.

Dated, Washington, DC
March 18, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member