

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOYCE M. KLAUZINSKI and DEPARTMENT OF VETERANS AFFAIRS,  
MEDICAL CENTER, Boston, MA

*Docket No. 02-161; Submitted on the Record;  
Issued November 1, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for a further review of the merits of her claim under 5 U.S.C. § 8128(a).

On October 2, 1998 appellant, then a 35-year-old medical clerk, filed a claim for an occupational disease for "exacerbation of irritable bowel syndrome and anxiety."

After developing the evidence, the Office, by decision dated September 28, 1999, found: "[w]e have accepted your claim for a brief single episode of aggravation of preexisting irritable bowel syndrome lasting no longer than July 17, 1998. However, we did not find this episode to be disabling. Your claim for compensation benefits for a psychiatric condition or for any continuing aggravation of irritable bowel syndrome has been disallowed...."

By letter dated October 22, 1999, appellant requested a review of the written record.

By decision dated July 31, 2000, an Office hearing representative found that most of the incidents cited by appellant as contributing to her conditions were administrative or personnel matters in which appellant had not shown error or abuse and that appellant had not submitted evidence substantiating her allegations of harassment and discrimination. The Office hearing representative further found that some of the cited incidents were potentially compensable factors of employment, but that the record contained no rationalized medical evidence to support that appellant had residuals of the accepted exacerbation of irritable bowel syndrome or that she had an emotional condition causally related to compensable factors of employment.

By letter dated February 28, 2001, appellant requested reconsideration "on the grounds that the hearing officer ... did not provide due process in not reviewing significant evidence submitted in support of this claim; failed to follow appropriate process and procedure; prematurely foreclosed and limited issues to be addressed by evaluators; and made other substantive and procedural errors."

By decision dated April 10, 2001, the Office found that the evidence submitted in support of appellant's request for reconsideration was insufficient to warrant reopening of her claim.

The only Office decision before the Board on this appeal is the Office's April 10, 2001 decision finding that appellant's application for review was not sufficient to warrant review of its prior decision. Since more than one year elapsed between the date of the Office's most recent merit decision on July 31, 2000 and the filing of appellant's appeal on October 16, 2001, the Board lacks jurisdiction to review the merits of appellant's claim.<sup>1</sup>

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

Section 8128(a) of the Federal Employees' Compensation Act 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 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.’”

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain a review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim.

Appellant did not submit any new evidence with her February 28, 2001 request for reconsideration. Her February 28, 2001 letter did not raise a specific point of law, let alone show that the Office erroneously applied or interpreted one. This letter also did not advance a relevant legal argument. Appellant's general allegations of violations of due process by the Office hearing representative are not sufficient to warrant reopening of appellant's case for further review of the merits of her claim.

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<sup>1</sup> 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office final decision being appealed.

The April 10, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
November 1, 2002

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member