

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHEN J. HENRY and DEPARTMENT OF THE ARMY,
DIRECTORATE OF CIVILIAN PERSONNEL, Fort McClellan, AL

*Docket No. 01-1809; Oral Argument Held November 7, 2002;
Issued March 11, 2003*

Appearances: *Stephen J. Henry, pro se; Thomas G. Giblin, Esq.*, for the Director,
Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

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 his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

In February 1995, appellant, then a 42-year-old visual information specialist, filed an occupational disease claim alleging that he sustained an emotional condition due to various incidents and conditions at work. He alleged that he was subjected to abusive administrative actions and harassment from supervisors. Appellant submitted a number of documents in connection with his claim, including documents relating to conflicts with three supervisors, George Haynes, Arnold Talbot and JoJo Corkan.¹ By decision dated September 28, 1995, the Office denied appellant's claim on the grounds that he did not establish any compensable employment factors. By decisions dated May 2, 1997, September 15, 1998 and October 13, 1999, the Office affirmed its prior decisions after reviewing appellant's claim on the merits. By decision dated May 1, 2001, the Office denied appellant's request for merit review.

The Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his 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 May 1, 2001 decision denying appellant's request for a review on the merits of its prior merit decisions. Because more than one year has elapsed between the issuance of the Office's last merit decision dated

¹ Appellant later submitted additional evidence and argument in support of his claim.

October 13, 1999 and July 13, 2001, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the Office's prior merit decisions.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'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.⁴ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.⁵ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁶

In connection with his September 14, 2000 reconsideration request, appellant submitted a number of documents relating to conflicts with three supervisors, Mr. Haynes, Mr. Talbot and Ms. Corkan. However, appellant had previously submitted these documents and the Office had previously considered them. 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.⁷ Appellant alleged that these documents were missing from the record and that the Office did not have them prior to making its initial merit decision on September 28, 1995. However, the record clearly contains these documents and shows that they were date-stamped as received by the Office on March 10, 1995. Additional copies of these documents were also submitted at later dates and they were considered in conjunction with several later merit decisions. Moreover, appellant had previously argued that these documents were missing from the record and the Office has previously rejected this argument.

Appellant argued that the Office failed to consider the issues raised by the above-mentioned documents. However, the Office has performed a limited review of the merit decisions of the Office in this regard and notes they show that the Office fully considered the relevant evidence and arguments presented by appellant. The fact that the Office may not have detailed every aspect of each document and argument appellant submitted to the Office does not mean that the Office did not adequately consider the evidence and argument submitted by

² See 20 C.F.R. § 501.3(d)(2).

³ 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).

⁴ 20 C.F.R. §§ 10.606(b)(2).

⁵ 20 C.F.R. § 10.607(a).

⁶ 20 C.F.R. § 10.608(b).

⁷ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

appellant. Therefore, appellant's argument in this regard does not have a reasonable color of validity.⁸ In the statement accompanying his reconsideration request, appellant outlined a number of administrative actions and conflicts with supervisors which he believed caused his emotional condition. However, appellant had previously made these arguments and the Office had previously rejected them. Appellant also indicated that the Office improperly indicated in its September 28, 1995 decision that he had not submitted medical evidence. However, this argument does not have a reasonable color of validity in that a limited review of the Office's September 28, 1995 decision shows that the Office acknowledged receipt of the medical records, but determined that they did not support appellant's claim.⁹

In the present case, appellant has not established that the Office abused its discretion in its May 1, 2001 decision by denying his request for a review on the merits of its prior merit decisions 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.

The May 1, 2001 decision of the Office of Workers' Compensation Programs is affirmed.¹⁰

Dated, Washington, DC
March 11, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

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

⁹ Moreover, the Office denied appellant's claim on the basis that he did not establish any compensable employment factors.

¹⁰ The Board notes that Chairman Michael J. Walsh, who participated in the oral argument was no longer a member of the Board after January 10, 2003, as his appointment expired, and he did not participate in the preparation of this decision.