

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PEARL LEWIS, claiming as widow of WALTER H. LEWIS and U.S. POSTAL SERVICE, BISCAYNE ANNEX, Miami, FL

*Docket No. 02-856; Submitted on the Record;
Issued March 26, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

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

This case has previously been before the Board on appeal. By decision dated June 9, 2000, the Board found that the evidence established that the employee was exposed to asbestos in his employment at the employing establishment. The Board held, however, that the medical evidence did not establish that the employee's death on June 11, 1997 was causally related to this accepted exposure.¹

By letter to the Office dated March 6, 2001, appellant requested reconsideration. She submitted a copy of an offer from the Manville Personal Injury Settlement Trust to settle her claim on behalf of her deceased husband against the asbestos manufacturer.

By decision dated May 29, 2001, the Office found that the evidence submitted in support of the request for reconsideration was of an immaterial nature and not sufficient to warrant review of the prior decision.

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).

¹ Docket No. 99-818 (issued June 9, 2000). The facts of the case as set forth in the prior decision are incorporated herein by reference.

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 previously awarded; or
- (2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain 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. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.²

The new evidence appellant submitted with her request for reconsideration, consisting of a settlement offer from the Manville Personal Injury Settlement Trust, does not address the basis on which her claim was denied: the inadequacy of the medical evidence to establish a causal relationship between the employee's accepted exposure to asbestos and his death. The offer from the settlement trust is not determinative of appellant's entitlement to death benefits under the Act. The fact that a settlement offer was made does not mean that the employee's death has been established as causally related to his asbestos exposure in this claim under the Act. It is therefore not relevant and is insufficient to require that the Office reopen the case for further review of the merits of appellant's claim.

² *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

The May 29, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
March 26, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member