

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CAROLYN E. MATTHEWS and U.S. POSTAL SERVICE,  
POST OFFICE, Baltimore, MD

*Docket No. 97-2551; Submitted on the Record;  
Issued August 23, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

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

The Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her 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 April 3, 1997 decision denying appellant's request for a review on the merits of its March 25, 1996 decision.<sup>1</sup> Because more than one year has elapsed between the issuance of the Office's March 25, 1996 decision and July 30, 1997, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the decision.<sup>2</sup>

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<sup>1</sup> The Office had accepted that appellant sustained a right humerus fracture on February 18, 1994 and paid compensation for periods of disability. By decision dated March 25, 1996, the Office adjusted appellant's compensation based on her wage-earning capacity as a general clerk. By decisions dated April 17 and June 4, 1996, the Office denied appellant's requests for merit review of its March 25, 1996 decision.

<sup>2</sup> See 20 C.F.R. § 501.3(d)(2). The record also contains an award of compensation, dated February 27, 1997, by which the Office granted appellant a schedule award for a 14 percent permanent impairment of her right arm. Appellant has not requested appeal of this decision before the Board.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>3</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.<sup>4</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.<sup>5</sup> When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.<sup>6</sup>

In support of her September 23, 1996 reconsideration request, appellant submitted a July 2, 1996 report in which Dr. Ashok Krishnaswamy, an attending Board-certified orthopedic surgeon, stated that when he saw appellant on April 12, 1996 she had reached maximum improvement from her humerus fracture and noted that he felt she could "go back to clerical work which did not involve much typing and computer skills." The submission of this report does not require reopening of appellant's claim because it does not relate to the main issue of the present case. The report does not contain an opinion that appellant could not work as a general clerk and therefore it does not relate to the issue of whether appellant's wage-earning capacity was represented by the position of general clerk. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>7</sup>

In the present case, appellant has not established that the Office abused its discretion in its April 3, 1997 decision by denying her request for a review on the merits of its March 25, 1996 decision under section 8128(a) of the Act, because she has failed to show that the Office erroneously applied or interpreted a point of law, that she advanced a point of law or a fact not previously considered by the Office or that she submitted relevant and pertinent evidence not previously considered by the Office.

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<sup>3</sup> 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 his own motion or on application." 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

<sup>5</sup> 20 C.F.R. § 10.138(b)(2).

<sup>6</sup> *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

<sup>7</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decision of the Office of Workers' Compensation Programs dated April 3, 1997 is affirmed.

Dated, Washington, D.C.  
August 23, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member