

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANE M. HURLOCK and U.S. POSTAL SERVICE,
POST OFFICE, Las Vegas, NV

*Docket No. 98-234; Submitted on the Record;
Issued August 6, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

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 July 14, 1997 decision denying appellant's request for a review on the merits of its June 27, 1996 decision. In its decision dated June 27, 1996, the Office denied appellant's claim for additional compensation for the period November 24, 1994 to February 26, 1996 on grounds that she had not submitted sufficient rationalized medical evidence to support her claim.¹ Because more than one year has elapsed between the issuance of the Office's June 27, 1996 decision and October 16, 1997, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the June 27, 1996 decision.²

¹ The Office had accepted that appellant sustained temporary aggravation of underlying chondromalacia and lateral patellar compression syndrome and paid compensation for periods of disability. By decision dated April 12, 1996, the Office determined that appellant did not have any employment-related disability after June 15, 1995, the date she returned to regular work for the employing establishment.

² See 20 C.F.R. § 501.3(d)(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 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.⁴ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁵ 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.⁶

By letter dated June 23, 1997, appellant requested reconsideration of her claim. In support of her claim, appellant submitted a March 13, 1997 report in which Dr. Daniel Malone, an attending Board-certified internist, indicated that she had degenerative disease in her knees starting "around 1994" and stated, "It is quite clear that these difficulties began after [appellant] was an employee at the postal service and also that the occupation that she has as a mail carrier has clearly aggravated the knee problem." This report of Dr. Malone is of limited probative value on the relevant issue of the present case in that it does not clearly delineate any particular period of disability or need for medical treatment due to her employment injury. Therefore it does not relate to the main issue of the present case, *i.e.*, whether appellant submitted sufficient evidence to establish that she was entitled to additional compensation for the period November 24, 1994 to February 26, 1996 due to her employment injury. 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.⁷

In the present case, appellant has not established that the Office abused its discretion in its July 14, 1997 decision by denying her request for a review on the merits of its June 27, 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.

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 his own motion or on application." 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁷ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decision of the Office of Workers' Compensation Programs dated July 14, 1997 is affirmed.

Dated, Washington, D.C.
August 6, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member