

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT D. LOKEN and U.S. POSTAL SERVICE,
POST OFFICE, Seattle, WA

*Docket No. 97-2203; Submitted on the Record;
Issued July 21, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for a merit review pursuant to 5 U.S.C. § 8128 constituted an abuse of discretion.

The Board's jurisdiction to consider and decide appeals from final Office decisions extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed his appeal with the Board on May 28, 1997, the only decision properly before the Board is the Office's February 6, 1997 decision denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's February 6, 1995 merit decision denying appellant's claim for compensation benefits or the February 14, 1996 Office hearing representative's decision affirming the February 6, 1995 decision.²

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office, in its February 26, 1997 decision, to reopen appellant's case for further consideration of the merits of his claim did not constitute an abuse of discretion.

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 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

¹ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

² *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

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

⁴ 20 C.F.R. § 10.138.

denying or terminating a benefit, a claimant must also 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

On May 11, 1994 appellant a 42-year-old flat sorting machine clerk, filed an occupational disease claim alleging that he sustained an emotional condition which he attributed to his employment.

By decision dated February 6, 1995, the Office denied appellant's claim for compensation benefits on the grounds that appellant had failed to establish that his condition was causally related to compensable factors of his employment.

By letter dated March 3, 1995, appellant requested an oral hearing before an Office hearing representative.

On November 30, 1995 a hearing was held before an Office hearing representative at which time appellant testified.

By decision dated February 14, 1996, the Office hearing representative affirmed the February 6, 1995 decision of the Office.

By letter dated February 12, 1997, appellant requested reconsideration of the Office's February 14, 1996 decision. He submitted no new evidence with his request for reconsideration and merely referred to evidence previously of record. As additional "grounds" for his request, he referenced a March 22, 1996 notice to employees from the employing establishment postal inspector, D.J. Breault. Appellant did not provide a copy of this document with his request for reconsideration and there is no copy of this document in the case record. In his letter requesting reconsideration, appellant also referenced an incident involving himself and his supervisor, Larry McCune, in the parking lot of the employing establishment but he provided no date and no details of the incident.

By decision dated February 26, 1997, the Office denied appellant's request for reconsideration.

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

In this case, appellant did not submit any relevant and pertinent evidence not previously considered by the Office nor did he advance a point of law or fact not previously considered by the Office or show that the Office erroneously applied or interpreted a point of law. As the "grounds" for his request, he referenced a March 22, 1996 notice to employees from the employing establishment postal inspector. However, he did not provide a copy of this document

⁵ 20 C.F.R. § 10.138(b)(2).

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

nor did he indicate the subject matter or relevance of this document to his case. Appellant also referenced an incident involving himself and his supervisor in the parking lot of the employing establishment but he provided no date and no details of the incident and therefore this information does not constitute relevant and pertinent evidence not previously considered by the Office. Thus, the Office did not abuse its discretion in denying appellant's request for further merit review of his case.

The February 26, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.

July 21, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member