

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY K. SPENCER and U.S. POSTAL SERVICE,
POST OFFICE, Charleston, WV

*Docket No. 98-1988; Submitted on the Record;
Issued February 18, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
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.

On October 2, 1995 appellant, then a 58-year-old window clerk, filed an occupational disease claim alleging that she sustained an employment-related upper back and neck condition. Appellant indicated that she was required to exceed the limitations of her light-duty position by repeatedly pushing, pulling and lifting heavy objects and claimed that a strip of aluminum molding fell on her head in mid September 1994. The employing establishment disputed appellant's account of her claimed employment factors and the Office provided appellant with an opportunity to submit additional factual and medical evidence in support of her claim. By decision dated April 12, 1996, the Office denied appellant's claim on the grounds that she did not establish the fact of injury. By letter dated April 2, 1997 and received April 8, 1997, appellant requested reconsideration of her claim and, by decision dated July 1, 1997, the Office denied appellant's request for merit review.

The only decision before the Board on this appeal is the Office's July 1, 1997 decision denying appellant's request for a review on the merits of its April 12, 1996 decision. Because more than one year has elapsed between the issuance of the Office's April 12, 1996 decision and June 11, 1998, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the April 12, 1996 decision.¹

¹ 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,² 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.³ 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.⁴ 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.⁵

In support of her April 1997 reconsideration, appellant submitted statements in which she repeated her assertion that a strip of aluminum molding fell on her head in September 1994 and contributed to her claimed back and neck problems. Appellant also discussed the nature of the medical treatment she received for her problems. The Board notes that these statements are similar to statements appellant previously submitted to the Office. The submission of these statements does not require the Office to perform a merit review in that 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.⁶

Appellant also submitted the results of a May 1996 magnetic resonance imaging test of her neck and a copy of an excerpt from a publication regarding herniated discs. These documents do not require the Office to perform a merit review in that they do not relate to the main issue of the present case, *i.e.*, whether appellant has submitted sufficient evidence to establish the fact of injury, an issue which essentially concerns the factual aspects of her several

² 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).

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

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980). Appellant also submitted photocopies of the Office's April 12, 1996 decision.

claimed employment factors. 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 1, 1997 decision by denying her request for a review on the merits of its April 12, 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.

The decision of the Office of Workers' Compensation Programs dated July 1, 1997 is affirmed.

Dated, Washington, D.C.
February 18, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁷ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979). Moreover, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee. *William C. Bush*, 40 ECAB 1064, 1075 (1989).