

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES A. PRICE and DEPARTMENT OF THE ARMY,  
CORPS OF ENGINEERS, Port Allen, LA

*Docket No. 98-2333; Submitted on the Record;  
Issued February 8, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, 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 his claim under 5 U.S.C. § 8128(a).

The only Office decision before the Board on this appeal is the Office's July 29, 1998 decision finding that appellant's application for review was not sufficient to warrant review of its prior decision. Since more than one year elapsed between the date of the Office's most recent merit decision on November 20, 1995 and the filing of appellant's appeal on August 10, 1998, the Board lacks jurisdiction to review the merits of appellant's claim.<sup>1</sup>

The Board finds that the Office improperly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

After the November 20, 1995 decision of an Office hearing representative, which addressed the merits of appellant's claim, appellant requested reconsideration by a letter to the Office dated June 21, 1996. By decision dated August 8, 1996, the Office found that the evidence submitted in support of the request for reconsideration was repetitious and not sufficient to warrant review of the prior decision. Appellant appealed this decision to the Board and on September 12, 1996 the Board requested that the Director of the Office transmit the case record to the Board. Not having received the record, the Board, by order dated May 5, 1998, remanded the case to the Office "for reconstruction and proper assemblage of the case record. In order to fully protect appellant's appeal rights, an appropriate decision shall then be issued."<sup>2</sup> On July 29, 1998 the Office issued a decision finding that the evidence submitted in support of

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<sup>1</sup> 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office final decision being appealed.

<sup>2</sup> Docket No. 96-2585 (issued May 5, 1998).

the request for reconsideration was repetitious and not sufficient to warrant review of the prior decision.

Thus, at the time of the prior appeal, the Board had jurisdiction over the merits of the claim, as it had jurisdiction over the Office hearing representative's November 20, 1995 decision. When the Board remanded the case to the Office for failure of the Office to transmit the case record to the Board, the Board ordered that the Office issue an appropriate decision "to fully protect appellant's appeal rights." The Office July 29, 1998 decision did not comply with the Board's May 5, 1998 order. This decision was not a decision on the merits of the claim and thus did not fully protect appellant's appeal rights, since the Board does not have the jurisdiction on the present appeal that it had on the prior appeal to review the merits of appellant's claim. The case will, therefore, be remanded to the Office for issuance of a decision on the merits of appellant's claim.

The decision of the Office of Workers' Compensation Programs dated July 29, 1998 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.  
February 8, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member