

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEBORAH J. LAKATOS and U.S. POSTAL SERVICE,  
MAPLE VALLEY STATION, Akron, OH

*Docket No. 01-1208; Submitted on the Record;  
Issued May 7, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

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 has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretion in denying appellant's request for review.

This case has been before the Board previously. By decision dated July 14, 2000, the Board affirmed an Office decision dated May 7, 1998 in which an Office hearing representative affirmed a July 30, 1997 decision which terminated appellant's compensation under 5 U.S.C. § 8106(c) based on her refusal to accept suitable employment.<sup>1</sup> The law and facts as set forth in the previous decision and order are incorporated herein by reference.

Subsequent to the Board's July 14, 2000 decision, on December 26, 2000 appellant, through her attorney, submitted a request for reconsideration.<sup>2</sup> With her request, appellant submitted an undated letter in which she provided reasons for her disagreement with the termination of compensation decision. By decision dated February 23, 2001, the Office denied appellant's reconsideration request on the grounds that the evidence submitted was insufficient to warrant merit review. The instant appeal follows.

The only decision before the Board in this appeal is the decision of the Office dated February 23, 2001 denying appellant's application for review. Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the

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<sup>1</sup> Docket No. 98-1977.

<sup>2</sup> The record further indicates that on October 11, 2000 appellant submitted a claim for a schedule award. The Board notes, however, that termination of compensation for refusing suitable work bars receipt of schedule award compensation after the date of termination. *Sandra A. Sutphen*, 49 ECAB 174 (1997).

Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>3</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>4</sup> Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>5</sup>

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.<sup>6</sup> In this case, with her request for reconsideration, appellant merely submitted a letter in which she took issue with the Office's termination of compensation based on her refusal of an offer of suitable work. She seemed to indicate that she refused the offer because she had retired. The record, however, indicates that she raised this issue previously. This, therefore, is not a new legal argument. In its decision dated July 14, 2000, the Board found that the Office did not abuse its discretion in terminating appellant's compensation. As appellant submitted no new relevant evidence and did not articulate any legal argument with a reasonable color of validity in support of her request for reconsideration, the Board finds that the Office properly denied appellant's application for reconsideration of her claim.<sup>7</sup>

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<sup>3</sup> 20 C.F.R. § 10.608(a) (1999).

<sup>4</sup> 20 C.F.R. § 10.608(b)(1) and (2) (1999).

<sup>5</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>6</sup> See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

<sup>7</sup> *Sherry A. Hunt*, 49 ECAB 467 (1998).

The decision of the Office of Workers' Compensation Programs dated February 23, 2001 is hereby affirmed.

Dated, Washington, DC  
May 7, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member