

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EUN S. KIM and U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Gaithersburg, Md.

*Docket No. 96-1532; Submitted on the Record;
Issued April 7, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant established that she sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by denying merit review of appellant's claim.

The Board has given careful consideration to the issues involved, the contentions on appeal and the entire case record. The Board finds that the June 27, 1995 decision of the Office hearing representative is in accordance with the facts and law in the case and hereby adopts the findings and conclusions of the hearing representative.

The Board also finds that the Office properly denied merit review on January 16, 1996. On September 22, 1995 appellant, through counsel, requested reconsideration and submitted additional medical evidence. By decision dated January 16, 1996, the Office denied appellant's reconsideration request, finding that the evidence submitted was insufficient to warrant merit review as it was immaterial to the issue on which benefits were denied.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ 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.² 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.³ To be entitled to merit review of an

¹ 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).

² 20 C.F.R. § 10.138(b)(1) and (2).

³ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

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.⁴

In this case, appellant did not show that the Office erroneously applied or interpreted a point of law and did not advance a point of law or fact not previously considered by the Office. In support of her request, appellant submitted additional medical evidence, consisting of treatment notes by Dr. Exall L. Kimbro, the August 4, 1995 report of Dr. Evelyn Adams, a clinical psychologist, and the July 24, 1995 report of Dr. Year-Kwon H. Yoon, her attending physician. However, as she has failed to establish a compensable factor of employment, it was unnecessary for the Office to address the medical evidence in this case.⁵ Consequently, the medical evidence submitted by appellant with her reconsideration request did not meet the requirements set forth at 20 C.F.R. § 10.138.

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.⁶ The Board finds that the Office properly denied appellant's application for reconsideration of her claim.

The decisions of the Office of Workers' Compensation Programs dated January 16, 1996 and June 27, 1995 are hereby affirmed.

Dated, Washington, D.C.
April 7, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁶ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).