

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUZANNE C. ENCHUS and U.S. POSTAL SERVICE,
SOUTH SUBURBAN FACILITY, Bedford Park, IL

*Docket No. 00-756; Submitted on the Record;
Issued December 28, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for merit review under 5 U.S.C. § 8128.

On January 13, 1997 appellant, then a 53-year-old flat sorter operator, filed a notice of occupational disease and claim for compensation alleging that in April 1995 she first realized that her herniated disc was due to her employment.

In an August 21, 1995 report, Dr. Abdul R.C. Amine, a treating Board-certified neurological surgeon, diagnosed a herniated disc at L4-5 and noted that appellant had been on light duty with limitations on pulling, lifting and pushing.

In a January 26, 1996 report, Dr. John M. Herbick, an attending Board-certified family practitioner, noted appellant's medical history, including prior work injuries and indicated that appellant began to have a recurrence of lower back pain in April 1995. Dr. Herbick stated that appellant saw Dr. Amine on April 4, 1995 and that her care was subsequently turned over to Dr. Amine.

On January 29, 1997 the Office advised appellant that the evidence of record was insufficient to support her claim and advised her as to the type of evidence required to support her claim.

By decision dated March 21, 1997, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish a causal relationship between her herniated disc and factors of her employment.

Appellant's counsel requested reconsideration in a letter dated March 13, 1998 and submitted a March 10, 1998 report from Dr. Leonard J. Weiss, Board-certified in psychiatry and internal medicine. Based on a review of medical reports and several sessions with appellant from April 22, 1997 through March 10, 1998, Dr. Weiss concluded that "causal relationship is

not only inferred, but directly implied. He stated that over the years, appellant worked at various positions, all of which involved repetitive work activity, which was “the primary causative agent” of her back condition.

By merit decision dated June 12, 1998, the Office denied appellant’s request for reconsideration on the basis that the evidence submitted was insufficient to warrant modification. The Office found Dr. Weiss to be speculative and not well rationalized.

In a letter dated June 11, 1999, appellant requested reconsideration of the Office’s June 12, 1998 decision.

On September 2, 1999¹ the Office denied appellant’s request for merit review.

The Board finds that the Office acted within its discretion in denying appellant’s request for merit review.

The Board’s jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal with the Board.² As appellant filed her appeal with the Board on December 10, 1999, the only decision before the Board is the Office’s September 2, 1999 nonmerit decision denying appellant’s application for review. The Board has no jurisdiction to review the most recent merit decision of record, the June 12, 1998 decision of the Office.

Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.³ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁴

In appellant’s request for reconsideration, she did not submit any evidence or argue that the Office erroneously applied or interpreted a point of law. Nor did she advance a relevant legal argument not previously considered by the Office. Appellant merely requested reconsideration of the denial of her claim. Therefore, the Office properly denied her request for reconsideration.

¹ The decision date was originally July 29, 1999, but was later reissued on September 2, 1999.

² *Jeanette Butler*, 47 ECAB 128, 129-30 (1995).

³ 20 C.F.R. § 10.606(b)(2) (1999)

⁴ 20 C.F.R. § 10.608(b) (1999).

The decision of the Office of Workers' Compensation Programs dated September 2, 1999 is hereby affirmed.

Dated, Washington, DC
December 28, 2000

Michael J. Walsh
Chairman

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member