

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of OLGA Y. KALBA and U.S. POSTAL SERVICE,
POST OFFICE, Newark, NJ

*Docket No. 00-1833; Submitted on the Record;
Issued April 10, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's December 9, 1999 request for reconsideration was insufficient to warrant merit review of the claim

The Office accepted that appellant, then a 31-year-old letter sorting machine clerk, sustained a lumbosacral sprain in the performance of duty on December 1, 1995. Appellant did not return to work. By decisions dated December 22 and 23, 1998, the Office terminated compensation for wage loss and medical benefits.¹

In a letter dated December 9, 1999, appellant, through her attorney, requested reconsideration of her claim. By decision dated February 1, 2000, the Office determined that the request was insufficient to warrant merit review of the claim.

With respect to the Board's jurisdiction to review final decisions of the Office, it is well established that an appeal must be filed no later than one year from the date of the Office's final decision.² As appellant filed her appeal on April 14, 2000, the only decision over which the Board has jurisdiction on this appeal is the February 1, 2000 decision denying her request for reconsideration.

The Board finds that the Office properly denied appellant's request for reconsideration without merit review of the claim.

¹ By decision dated July 23, 1996, the Office had terminated compensation for refusal of suitable work. In a decision dated February 19, 1997, the Office vacated the prior decision.

² See 20 C.F.R. § 501.3(d).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ the Office's 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; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁵

In this case, appellant did not submit any additional evidence. The December 9, 1999 letter request reconsideration on the grounds that a conflict existed between an attending physician and the Office referral physician.⁶ This cannot be considered a new legal argument, since appellant had previously submitted a letter dated December 6, 1998 arguing that a conflict existed between her attending physician and the referral physician. This letter was before the Office and was considered in the December 22 and 23, 1998 decisions.

The Board finds that appellant has not met any of the requirements of section 10.606(b)(2). Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a new and relevant legal argument, or submit new and relevant evidence. The Office therefore properly denied the request for reconsideration without merit review of the claim.

³ 5 U.S.C. § 8128(a) (providing that "[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").

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.608(b); *see also* *Norman W. Hanson*, 45 ECAB 430 (1994).

⁶ Section 8123(a) of the Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict. *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

The decision of the Office of Workers' Compensation Programs dated February 1, 2000 is affirmed.

Dated, Washington, DC
April 10, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member