

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FLORENCE M. COOPER-THORNTON and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, White River Junction, VT

*Docket No. 99-1633; Submitted on the Record;
Issued January 19, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
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.

On September 28, 1988 appellant filed a traumatic injury claim alleging that she injured her back, arm and hands while assisting a patient who had become disoriented and violent. The Office accepted the claim for low back strain on January 25, 1989 and was subsequently placed on the automatic rolls for temporary total disability.

On December 11, 1995 the Office issued a notice proposing to terminate benefits on the basis that appellant no longer had any continuing disability due to her accepted employment injury.

In an undated letter received on January 11, 1996, appellant disagreed with the Office's proposal to terminate benefits.

By decision dated January 18, 1996, the Office terminated appellant's compensation benefits as the probative medical evidence of record supported that she no longer had any continuing disability due to her accepted employment injury.

By letter dated January 31, 1996, appellant requested a hearing which was held on July 23, 1996 and submitted evidence in support of her request.

By decision dated October 31, 1996, the hearing representative affirmed the Office's January 18, 1996 decision which terminated appellant's benefits on the basis that the probative medical evidence of record established that any disability due her accepted employment injury had ceased. The hearing representative also found that the probative evidence of record was insufficient to support appellant's contentions that she sustained thoracic fractures at the time of her employment injury and that her emotional conditions and osteoporosis were consequential injuries from her accepted September 28, 1988 employment injury. The hearing representative

rejected appellant's arguments expanding her employment injury history. Specifically, the hearing representative rejected appellant's assertion that the injury occurred on September 28, 1988 when she was pushed against a wall by a patient and fell down a landing. This history was not contained in any of the contemporaneous evidence, medical or witness statements, submitted at that time of appellant's initial claim. Appellant also began providing an inaccurate history after 1991 to various treating physicians.

By letter dated October 29, 1997, appellant requested reconsideration of the hearing representative's decision and submitted an affidavit from Patricia Cummings Rockwell, a September 24, 1997 report by Dr. Daniel T. Baran, reports dated March 30, 1995 and March 13, 1997 from Dr. Ralph Yeakley, reports dated July 18 and July 25, 1997 from Dr. Annmarie McConagh-Coyle, an October 9, 1997 report from Dr. Leighton Y. Huey and reports dated October 14 and October 23, 1997 from Dr. Nancy Bagley in support of her request. She also reiterated that her injury was caused by being pushed against a wall which caused her to fall.

In a merit decision dated January 8, 1998, the Office denied appellant's request for reconsideration on the basis that the evidence was insufficient to warrant modification. The Office rejected appellant's argument regarding the revised history of her injury as unsubstantiated by the medical and factual evidence submitted at the time of the injury.

By letter dated January 5, 1999, appellant's counsel requested reconsideration and argued that the Office failed to meet its burden of proof in terminating benefits as it had failed to provide a complete statement of accepted facts or explore appellant's contentions regarding the true history of appellant's injury.

On January 20, 1999 the Office denied appellant's request for a merit review as appellant had not raised any new legal issue nor provided new evidence.

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.¹ As appellant filed her appeal with the Board on April 30, 1999, the only decision before the Board is the Office's January 20, 1999 nonmerit decision denying appellant's application for review. The Board has no jurisdiction to review the most recent merit decision of record, the January 8, 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.² Section 10.608(b) provides that when an application for review of the

¹ *Jeanette Butler*, 47 ECAB 128, 129-30 (1995).

² 20 C.F.R. § 10.606(b)(2) (1999).

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.³

In her letter requesting reconsideration, appellant did not submit any new evidence nor did she argue that the Office erroneously applied or interpreted a point of law. Nor did she advance a point of law or a fact not previously considered by the Office. Appellant merely requested reconsideration of the denial of her claim and reiterated her argument that the Office had not considered her revised employment injury history and all the evidence supporting it.

Appellant's changed statement regarding the details of her employment injury do not have a reasonable color of validity since, the issue in this case is essentially medical in nature and because the statements by a coworker and appellant are not contemporaneous with appellant's initial statement, the witness statements submitted at the time of the injury as well as the initial medical reports. In addition, while reopening a case may be predicated solely on a legal premise not previously considered, the legal premise she is arguing on appeal had been considered and rejected by the hearing representative.

Consequently, appellant has not established that the Office abused its discretion under section 8128(a) of the Federal Employees' Compensation Act, because she has failed to show that the Office erroneously applied or interpreted a point of law, that she advanced a point of law not previously considered by the Office or that she submitted relevant and pertinent evidence not previously considered by the Office.

The decision of the Office of Workers' Compensation Programs dated January 20, 1999 is hereby affirmed.

Dated, Washington, DC
January 19, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

³ 20 C.F.R. § 10.608(b) (1999).