

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN BRIGHT and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, TN

*Docket No. 98-2334; Submitted on the Record;
Issued December 27, 2000*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's May 8, 1998 request for reconsideration was insufficient to warrant merit review of the claim.

On March 24, 1993 appellant filed a claim alleging that he sustained an emotional condition causally related to his federal employment. The claim was initially denied by decisions dated August 11, 1993 and February 9, 1994. In a decision dated July 10, 1995, the Office accepted the conditions of major depression and aggravation of post-traumatic stress disorder as employment related. The Office also found that the evidence was insufficient to establish any disability causally related to the accepted conditions.

In a decision dated May 6, 1996, the Office determined that the medical evidence did not establish any disability causally related to the employment injuries. By decision dated May 12, 1997, an Office hearing representative affirmed the May 6, 1996 decision.

By decision dated May 28, 1998, the Office determined that a May 8, 1998 request for reconsideration 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.¹ As appellant filed his appeal on August 10, 1998 the only decision over which the

¹ See 20 C.F.R. § 501.3(d).

Board has jurisdiction on this appeal is the May 28, 1998 decision denying his request for reconsideration.²

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

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 provided that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law, or (2) advancing a point of law or fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ Section 10.138(b)(2) states that any application for review that does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.⁵

Appellant did not submit any additional medical evidence with the May 8, 1998 reconsideration request. The request asserts that, since the Office accepted the claim, the Office has the burden of proof to show the claimant was no longer disabled. In this case, however, the record clearly indicates that the Office has never accepted a period of disability causally related to the accepted employment injuries. An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim, including that any disability, for which compensation is claimed is causally related to the employment injury.⁶ It remains appellant's burden of proof with respect to establishing the period of disability resulting from his employment injuries. Appellant has, therefore, not shown that the Office erroneously applied or interpreted a point of law. Although the reopening of a case for merit review may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁷

Appellant has not met any of the requirements of section 10.138 in this case. Accordingly, the Office properly denied the request for reconsideration without merit review of the claim.

The decision of the Office of Workers' Compensation Programs dated May 28, 1998 is hereby affirmed.

² The Board initially dismissed this appeal by order dated October 27, 1999, on the grounds that appellant did not submit sufficient information to process the appeal. By order dated October 24, 2000, the Board granted appellant's petition for reconsideration and reinstated the appeal docketed as No. 98-2334.

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. § 10.138(b)(1).

⁵ 20 C.F.R. § 10.138(b)(2); *see also* *Norman W. Hanson*, 45 ECAB 430 (1994).

⁶ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Sherry A. Hunt*, 49 ECAB 467 (1998); *Constance G. Mills*, 40 ECAB 317 (1988).

Dated, Washington, DC
December 27, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member