

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. WARREN and U.S. POSTAL SERVICE,
POST OFFICE, Jackson, TN

*Docket No. 00-687; Submitted on the Record;
Issued January 25, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's requests for reconsideration were insufficient to warrant merit review of the claim.

The Office accepted that appellant sustained right shoulder tendinitis causally related to factors of her employment as a letter carrier. By decision dated October 13, 1998, the Office determined that appellant had not established a recurrence of disability commencing May 29, 1998.

In a letter dated November 9, 1998, appellant requested reconsideration of her claim. By decision dated December 7, 1998, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim. In a letter dated October 7, 1999, appellant again requested reconsideration. By decision dated October 27, 1999, the Office again determined that appellant's 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 her appeal on November 8, 1999, the only decisions over which the Board has jurisdiction on this appeal are the December 7, 1998 and October 27, 1999 decisions denying her requests for reconsideration.

The Board has reviewed the record and finds that the Office properly refused to reopen the case for merit review.

¹ 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,² 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, or (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.³ 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.⁴

The underlying issue in this case is a claim for a recurrence of disability commencing May 29, 1998 causally related to the accepted right shoulder tendinitis. A review of the evidence submitted after the October 13, 1998 merit decision indicates that appellant has not submitted any new and relevant evidence on this issue. Appellant submitted continuing reports from her treating physician, Dr. Mary Scott, a family practitioner, who provided results on examination without discussing the relevant issues.

In a report dated September 14, 1999, Dr. Scott stated that, since appellant went back to work, she had more pain in the right shoulder and forearm, consistent with muscle strain tendinitis and overuse syndrome. While Dr. Scott discussed appellant's current condition, the issue is a recurrence of disability as of May 29, 1998 causally related to appellant's federal employment. Dr. Scott does not address this issue in any of the reports submitted after the October 13, 1998 merit decision.

The Board accordingly finds that appellant has not submitted new and pertinent evidence. The November 8, 1998 reconsideration request did not meet any of the requirements of 20 C.F.R. § 10.138(b)(1), nor did the October 7, 1999 reconsideration request meet the requirements of section 10.606(b)(2). Therefore, the Office properly denied the requests for reconsideration without merit review.⁵

² 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").

³ 20 C.F.R. § 10.606(b)(2).

⁴ 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994). The Board notes that, at the time of the December 7, 1998 Office decision, the regulations provided that a claimant could obtain merit review 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. 20 C.F.R. § 10.138(b)(1) (1998).

⁵ The Board notes that it is limited to review of evidence that was before the Office at the time of the Office final decisions; the Board cannot review evidence received by the Office after October 27, 1999. 20 C.F.R. § 501.2(c).

The decisions of the Office of Workers' Compensation Programs dated October 27, 1999 and December 7, 1998 are affirmed.

Dated, Washington, DC
January 25, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member