

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHY MARIE ROBINSON and U.S. POSTAL SERVICE,
POST OFFICE, Pismo Beach, CA

*Docket No. 00-748; Submitted on the Record;
Issued March 22, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has duly reviewed the case record and finds that the Office acted within its discretion in refusing to reopen appellant's case for further consideration of the merits.

The only decision before the Board is the Office's July 27, 1999 decision. Because more than one year has elapsed between the issuance of the last merit decision dated June 10, 1998¹ and December 9, 1999, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the June 10, 1998 decision.²

This case has previously been before the Board, which affirmed the Office's decisions dated November 14, October 5, September 14 and August 29, 1995 and March 11, 1996 finding that appellant had no continuing disability due to her accepted employment injury.³ The facts of this case are more fully set forth in the Board's June 10, 1998 decision and are herein incorporated by reference.⁴

¹ By decision dated June 10, 1998, the Board affirmed the Office's decisions dated November 14, October 5, September 14 and August 29, 1995 and March 11, 1996 which found that appellant had no continuing disability due to her accepted employment injury. *Kathy Marie Robinson*, Docket No. 96-1983 (issued June 10, 1998).

² See 20 C.F.R. § 501.3(d)(2).

³ The Board notes that effective September 14, 1998 appellant received a retirement annuity from the Office of Personnel Management and that she elected to receive benefits under Federal Employees' Compensation Act for the period November 19, 1997 through June 18, 1998.

⁴ Docket No. 96-1983 (issued June 10, 1998).

Following the Board's June 10, 1998 decision, appellant, by letter dated June 29, 1999, requested reconsideration. By decision dated July 27, 1999, the Office denied appellant's request for further merit review of her claim.

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) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.⁵ 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.⁶

In her June 10, 1999 letter requesting reconsideration, appellant did not submit any relevant and pertinent new evidence not previously considered by the Office and did not argue that the Office erroneously applied or interpreted a specific point of law. Nor did she advance a point of law or fact not previously considered by the Office. Appellant merely stated her opinion that she continued to be totally disabled due to her employment injury. Therefore, the Office properly denied her request for reconsideration.

The July 27, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 22, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁵ 20 C.F.R. § 10.606(b)(2) (1999).

⁶ 20 C.F.R. § 10.608(b) (1999).