

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA COLVIN and DEPARTMENT OF THE ARMY,
WARRIOR DENTAL CLINIC, Ft. Polk, LA

*Docket No. 00-1271; Submitted on the Record;
Issued March 16, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record and finds that the Office's refusal to reopen appellant's case for further consideration of the merits of her claim did not constitute an abuse of discretion.

On May 12, 1995 appellant, a then 40-year-old dental assistant, filed a traumatic injury claim alleging that on May 11, 1995 she was "reaching over her head and felt something pulled." She stated that eventually her face, arm, and shoulder became numb. The Office accepted appellant's claim for cervical strain on October 5, 1995. On May 8, 1996 appellant suffered a recurrence while at work and filed a recurrence claim on February 5, 1997. The Office accepted appellant's claim for recurrence on September 25, 1997. On November 10, 1997 appellant informed her employer that she was disabled and unable to work, based on a duty status report (Form CA-17) from Dr. David Kline, a Board-certified neurological surgeon, dated that same day, diagnosing appellant with "reaggravation of old TOS syndrome." On November 25, 1997 appellant filed a claim for compensation (Form CA-7) claiming wage loss for the period November 10 to December 12, 1997. By decision dated November 30, 1998, appellant's claim for compensation was denied because the medical evidence in the record failed to establish that her claimed period of disability was due to her May 11, 1995 accepted injury.

By letter dated January 15, 1999, appellant requested reconsideration. By decision dated March 4, 1999, her request was denied as her letter neither raised substantive legal questions nor included new and relevant 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.¹ Because more than one year has elapsed between the issuance of the Office's November 30, 1998 decision and February 17, 2000, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the November 30, 1998 decision and any preceding decisions. Therefore, the only decision before the Board is the Office's March 4, 1999 nonmerit decision denying appellant's application for review of its November 30, 1998 decision.

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 provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁵

In support of the January 15, 1999 request for reconsideration, appellant submitted several duplicate forms already on file with the Office. She submitted an attending physician's report (Form CA-20) from Dr. Ronald S. Kober, a Board-certified thoracic surgeon, dated November 20, 1997, diagnosing appellant with thoracic outlet syndrome. Appellant also submitted several duty status reports (Form CA-17) from various physicians, dated between April 10 and November 22, 1997, diagnosing her with thoracic outlet syndrome. Also included was a medical report from Dr. Kober, evidencing appellant's operation of January 22, 1997.⁶

The relevant issue is whether appellant has established a recurrence of disability causally related to her May 11, 1995 employment injury, which was accepted for cervical strain. The Board notes that the Office has not accepted appellant's thoracic outlet syndrome as employment related.

The evidence submitted by appellant in support of her request for reconsideration is irrelevant or duplicate evidence that does not address her claim of disability from November 10 to December 12, 1997. The duty status reports and physicians reports submitted do not indicate that appellant was disabled from November 10 to December 12, 1997. Also, the medical

¹ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.606.

⁴ 20 C.F.R. § 10.607.

⁵ 20 C.F.R. § 10.608.

⁶ Appellant also submitted documents from 1982 and 1983 when she allegedly suffered a traumatic injury and underwent surgery.

evidence provides a diagnosis of appellant's condition as thoracic outlet syndrome, but does not establish that her disability is due to her May 11, 1995 injury.

As appellant's January 15, 1999 request for reconsideration does not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying that request.

The decision of the Office of Workers' Compensation Programs dated March 4, 1999 is hereby affirmed.

Dated, Washington, DC
March 16, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member