

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ESTELA LEMA-KLINGER and DEPARTMENT OF JUSTICE,  
IMMIGRATION & NATURALIZATION SERVICE, Miami, FL

*Docket No. 00-1756; Submitted on the Record;  
Issued November 14, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,  
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 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 on this appeal is dated January 27, 2000, which denied appellant's application for a reconsideration of its January 7, 1999 merit decision.<sup>1</sup> Because more than one year has elapsed between the issuance of the Office's January 7, 1999 merit decision and April 20, 2000, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the January 7, 1999 decision.<sup>2</sup>

The Federal Register dated November 25, 1998 advised that, effective January 4, 1999, certain changes to 20 C.F.R. Parts 1 to 399 would be implemented. The revised Office procedures pertaining to the requirements for obtaining a review of a case on its merits under 5 U.S.C. § 8128(a), state as follows:

“(b) The application for reconsideration, including all supporting documents, must: (1) Be submitted in writing; (2) Set forth arguments and contain evidence that either: (i) Shows that OWCP erroneously applied or interpreted a specific point of law; (ii) Advances a relevant legal argument not previously considered by

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<sup>1</sup> By this decision, the hearing representative denied modification of a November 7, 1997 decision which found that appellant had failed to implicate any compensable factors of her federal employment in the development of her emotional condition.

<sup>2</sup> See 20 C.F.R. § 501.3(d)(2).

OWCP; or (iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”<sup>3</sup>

To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>4</sup> The Board has found that the imposition of the one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under section 8128(a) of the Act.<sup>5</sup> When a claimant fails to meet one of the above-mentioned 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.”<sup>6</sup>

In support of her reconsideration request, appellant submitted medical reports from Drs. Wilfredo Amaya and Juan Carlos Parades. However, since no implicated factors of employment had been established as being compensable, medical evidence was irrelevant. These reports thus have no probative value. Therefore, they do not constitute identification of an erroneously applied or interpreted specific point of law, relevant or pertinent new medical evidence not previously considered by the Office supporting appellant’s contentions, or relevant legal argument not previously considered. Consequently, the evidence submitted in support of appellant’s request for reconsideration of the January 7, 1999 Office merit decisions does not constitute a basis for reopening her claim for further merit review.

The decision of the Office of Workers’ Compensation Programs dated January 27, 2000 is hereby affirmed.

Dated, Washington, DC  
November 14, 2001

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>3</sup> 20 C.F.R. § 10.606(b)(1), (2).

<sup>4</sup> 20 C.F.R. § 10.607(a).

<sup>5</sup> *Diane Matchem*, 48 ECAB 532 (1997); *Jeanette Butler*, 47 ECAB 128 (1995); *Mohamed Yunis*, 46 ECAB 827 (1995); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>6</sup> *See Mohamed Yunis*, *supra* note 5; *Elizabeth Pinero*, 46 ECAB 123 (1994); *Joseph W. Baxter*, 36 ECAB 228 (1984).