

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANGELA K. POLLARD and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Cleveland, OH

*Docket No. 03-2080; Submitted on the Record;
Issued November 7, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

On December 15, 2000 appellant, then a 26-year-old mailhandler, filed an occupational disease claim, alleging that employment factors caused emotional and physical stress including migraines, depression, anxiety, tension, memory loss and back and shoulder pain.¹ She last worked on December 13, 2000.² In a letter dated January 10, 2001, the Office informed appellant of the type evidence needed to support her claim. In a second letter that day, the Office requested that the employing establishment furnish information regarding her claim. In response, appellant submitted statements and medical evidence. By decision dated April 18, 2001, the Office denied the claim on the grounds that appellant did not establish that she sustained an emotional condition in the performance of duty.

On April 1, 2002 appellant requested reconsideration and submitted additional evidence. By decision dated July 3, 2002, the Office denied modification of its prior decision. In an undated letter stamped received by the Office on July 11, 2002, appellant requested reconsideration. By decision dated July 16, 2002, the Office denied her reconsideration request, noting that she submitted no new evidence or argument. Appellant again requested reconsideration on November 3, 2002.³ In a decision dated November 15, 2002, the Office again

¹ The Board notes that, while appellant claimed that she sustained employment-related back and shoulder pain, the evidence she submitted, including medical evidence, was in regard to a claim for an emotional condition and she did not describe any employment factors that she believed contributed to her back and shoulder pain. The claim was developed by the Office solely as an emotional condition claim.

² The record indicates that she was served with a notice of removal on that date.

³ In her November 3, 2002 letter, appellant stated that she was submitting new information. The record, however, contains nothing other than the letter.

denied her reconsideration request on the grounds that she neither raised substantive legal questions nor included new and relevant evidence. The instant appeal follows.

The Board finds that the Office properly denied appellant's request for reconsideration.

The only decision before the Board in this appeal is the decision of the Office dated November 15, 2002, denying appellant's application for review. Since more than one year had elapsed between the date of the Office's most recent merit decision dated July 3, 2002 and the filing of appellant's appeal with the Board on August 13, 2003, the Board lacks jurisdiction to review the merits of her claim.⁴

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).⁵ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.⁶ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁷

In her November 3, 2002 reconsideration request, appellant merely stated "[p]lease allow a reconsideration" and that she had new information to submit. She further stated, "I have a list of everything you have already received. Please notify me of any additional information you need."

The Board finds that, as appellant submitted no new evidence with her November 3, 2002 request for reconsideration, she failed to submit relevant and pertinent evidence not previously considered by the Office. Furthermore, her brief recitation that she was requesting reconsideration did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. The Board therefore, concludes that the Office properly denied merit review of appellant's claim.⁸

⁴ 20 C.F.R. § 501.3(d)(2).

⁵ 20 C.F.R. § 10.608(a) (1999).

⁶ 20 C.F.R. § 10.608(b)(1) and (2) (1999).

⁷ 20 C.F.R. § 10.608(b) (1999).

⁸ *Sherry A. Hunt*, 49 ECAB 467 (1998).

The decision of the Office of Workers' Compensation Programs dated November 15, 2002 is hereby affirmed.

Dated, Washington, DC
November 7, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member