

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN C. STEWART and DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE, Jackson, MS

*Docket No. 00-247; Submitted on the Record;  
Issued November 13, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

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

In the present case, appellant filed a claim alleging that he sustained numbness and a burning sensation in his left shoulder, arm and leg following a heated argument with a coworker on September 9, 1997. By decision dated May 15, 1998, the Office denied the claim on the grounds that the medical evidence was insufficient to establish an employment injury. In a decision dated May 17, 1999, the Office determined that appellant's May 14, 1999 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.<sup>1</sup> As appellant filed his appeal on August 13, 1999, the only decision over which the Board has jurisdiction on this appeal is the May 17, 1999 decision denying his request for reconsideration.

The Board has reviewed the record and finds that the Office properly denied appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>2</sup> 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

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<sup>1</sup> See 20 C.F.R. § 501.3(d).

<sup>2</sup> 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").

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.<sup>3</sup> 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.<sup>4</sup>

In this case, the underlying merit decision dated May 15, 1998 denied appellant's claim on the grounds that the medical evidence was insufficient. On reconsideration, the only new medical evidence submitted was a treatment note dated May 29, 1996 from Dr. R. Gorman, a neurologist. Dr. Gorman stated that appellant was seen for cervical radiculopathy status post motor vehicle accident, noting that appellant's job involved walking and climbing that could aggravate his condition. The underlying medical issue, however, is causal relationship between a diagnosed condition and a September 9, 1997 employment incident. Dr. Gorman does not provide any probative evidence on this issue.

The Board finds that appellant did not submit new and relevant medical evidence, nor did he meet any of the requirements for reopening his claim for merit review. Accordingly, the Board finds that the Office properly denied appellant's May 14, 1999 request for reconsideration on the grounds that it was insufficient to warrant merit review of the claim.

The decision of the Office of Workers' Compensation Programs dated May 17, 1999 affirmed.

Dated, Washington, DC  
November 13, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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

<sup>4</sup> 20 C.F.R. § 10.608(b); *see also* Norman W. Hanson, 45 ECAB 430 (1994).