

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CATHERINE C. LYNCH and U.S. POSTAL SERVICE,
POST OFFICE, Pittsfield, MA

*Docket No. 00-1104; Submitted on the Record;
Issued April 5, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

On September 3, 1991 appellant, then a 39-year-old letter carrier, sustained an avulsion fracture of the right foot while in the performance of duty. She received appropriate wage-loss compensation and in May 1995 filed a claim for a schedule award. Although the claim was initially denied, the Office later rescinded its denial and on October 8, 1996 granted her a schedule award for three percent permanent impairment of her right lower extremity.

Appellant sought reconsideration on several occasions, arguing that she was entitled to a schedule award for a 30 percent permanent impairment based on the assessment of her treating physician, Dr. John C. Bouillon, a Board-certified orthopedic surgeon. She also repeatedly alleged that the medical evidence upon which the Office relied in determining her entitlement to a schedule award was biased.

The Office issued merit decisions denying modification on February 24 and August 18, 1997. Additionally, the Office denied reconsideration without reaching the merits of appellant's claim on January 21, 1998. The Office's most recent merit decision denying modification is dated September 4, 1998. Appellant subsequently filed additional requests for reconsideration on July 16 and September 3, 1999, which the Office denied on August 10 and October 14, 1999, respectively.

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 As appellant filed her appeal with the Board on January 11, 2000, the Board lacks jurisdiction to review the Office's most recent merit decision dated September 4, 1998. Consequently, the only

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

decisions properly before the Board are the Office's August 10 and October 14, 1999 decisions denying reconsideration.

The Board finds that the Office acted within its discretion in refusing to reopen appellant's case for merit review.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.² Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.³

Appellant's July 16 and September 3, 1999 requests for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

The October 14, 1999 decision denying reconsideration correctly notes that appellant did not submit any new and relevant evidence with her September 3, 1999 request for reconsideration. And with her July 16, 1999 request for reconsideration, appellant merely submitted copies of prior Office decisions. Consequently, she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office acted within its discretion in denying appellant's July 16 and September 3, 1999 requests for reconsideration.

² 20 C.F.R. § 10.606(b)(2) (1999).

³ 20 C.F.R. § 10.608(b) (1999).

The decisions of the Office of Workers' Compensation Programs, dated October 14 and August 10, 1999, are hereby affirmed.

Dated, Washington, DC
April 5, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member