

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES TURNAGE and U.S. POSTAL SERVICE,
POST OFFICE, Shreveport, LA

*Docket No. 00-2360; Submitted on the Record;
Issued August 3, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs, by its March 23, 2000 decision, abused its discretion by refusing to reopen appellant's case for further consideration of the merits of his claim under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record and finds that by its decision dated March 23, 2000, the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim did not constitute an abuse of discretion.

On June 27, 1997 appellant, then a 48-year-old letter carrier, filed an occupational disease claim alleging that he suffered nerve damage on the left side of his neck and left arm from carrying a heavy mailbag. On September 26, 1997 the Office accepted appellant's claim for cervical strain. The Office granted appellant a three percent schedule award on August 7, 1998 for permanent loss of use of the left upper extremity. The award ran from January 31 to April 6, 1998. By an undated letter received on August 31, 1998, appellant requested a hearing before an Office hearing representative. The hearing was scheduled and held on January 21, 1999. By decision dated April 12, 1999, the hearing representative affirmed the Office's August 7, 1998 decision. By undated letter received on March 14, 2000, appellant requested reconsideration of the Office's April 12, 1999 decision. By decision dated March 23, 2000, the Office denied appellant's undated request for reconsideration finding that the request was insufficient to warrant review of the prior decision.

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 April 12, 1999 decision and June 22, 2000, the date appellant filed his appeal with the Board,² the Board lacks

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

² Appellant's appeal was postmarked June 16, 2000.

jurisdiction to review the April 12, 1999 decision and any preceding decisions. Therefore, the only decision before the Board is the Office's March 23, 2000 nonmerit decision denying appellant's appeal for a review of its April 12, 1999 decision.

To require the Office to reopen a case for merit review, section 10.606 provides that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and setting forth arguments or submitting evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.³ When a claimant fails to meet at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.⁴

In support of the undated request for reconsideration received on March 14, 2000, appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit new and relevant evidence. Appellant's reconsideration request simply stated that after undergoing further tests and treatment he would have new medical evidence to submit. However, nothing was submitted. The issue of whether appellant has more than a three percent permanent loss of use of his left upper extremity is medical in nature and in the absence of additional medical evidence, the Office properly denied the request for reconsideration.

As appellant's request for reconsideration received on March 14, 2000 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.

³ 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

⁴ 20 C.F.R. § 10.608(a).

The March 23, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
August 3, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member