

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAURIE RAINES and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Minneapolis, MN

*Docket No. 01-145; Submitted on the Record;
Issued August 6, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs, by its November 23, 1999 decision, properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a); and (2) whether the Office, by its July 12, 2000 decision, properly found that appellant's request for reconsideration was not timely filed and did not show clear evidence of error.

On February 19, 1998 appellant, then a 48-year-old mailhandler, filed an occupational disease claim for osteoarthritis of her hands, knees and feet. She submitted a description of the employment factors to which she attributed her condition and submitted medical evidence.

By decision dated June 8, 1998, the Office found that appellant had not established that her condition was causally related to her employment.

Appellant requested a hearing, which was held on November 19, 1998 and submitted additional medical evidence. By decision dated February 2, 1999, an Office hearing representative found that the evidence failed to establish that appellant's bilateral hand, knee and foot conditions were causally related to her employment. This Office hearing representative found that the reports of appellant's attending physician, Dr. Mark Heller, were "speculative, unrationalized and not based on a specific description of work activities."

By letter dated October 29, 1999, appellant requested reconsideration. She submitted additional medical evidence, including an April 7, 1999 report from Dr. Steven Trobiani, who examined appellant at Dr. Heller's request. Dr. Trobiani stated:

"It is my opinion that the osteoarthritis, as relates to her knees and feet, cannot be clearly related to her employment with the [employing establishment]. She did, however, continue to engage in high repetitive activity with the use of the hands in handling torn mail and taping this mail and then placing this into an envelope and taping the envelope so that she was responsible for handling pieces at a

frequency of 1 every 2 minutes or up to 180 pieces per day in a 6-hour period of time. This would certainly have a deleterious effect on her osteoarthritis and would result in an aggravation of her condition and more rapid deterioration of the joints of her hands. This appears to have been at least, in part, responsible for the development of the symptoms in her hands by August 1997 and consequent disability.”

By decision dated November 23, 1999, the Office found that appellant’s request for reconsideration did not raise substantive legal questions or include new and relevant evidence, and was insufficient to warrant review of its prior decision.

By letter dated June 30, 2000, appellant requested reconsideration and submitted a report from Dr. Heller dated May 24, 2000. By decision dated July 12, 2000, the Office found that appellant’s June 30, 2000 request for reconsideration was not timely filed and did not present clear evidence of error.

The only Office decisions before the Board on this appeal are the Office’s November 23, 1999 decision finding that appellant’s application for review was not sufficient to warrant review of its prior decision and the Office’s July 12, 2000 decision finding that appellant’s request for reconsideration was not timely filed and did not present clear evidence of error. Since more than one year elapsed between the date of the Office’s most recent merit decision on February 2, 1999 and the filing of appellant’s appeal on March 8, 2000, the Board lacks jurisdiction to review the merits of appellant’s claim.¹

The Board finds that the Office, by its November 23, 1999 decision, improperly refused to reopen appellant’s case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

Section 8128(a) of the Federal Employees’ Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

Under section 10.606(b)(2),² a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one

¹ 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office’s final decision being appealed.

² 20 C.F.R. § 10.606(b)(2).

of these three requirements the Office will deny the application for review without reviewing the merits of the claim.³

The April 7, 1999 report from Dr. Trobiani constitutes new and relevant evidence. Dr. Trobiani is a physician not previously associated with the case. His report describes the light-duty work appellant performed and concludes that this work “would certainly have a deleterious effect on her osteoarthritis and would result in an aggravation of her condition and more rapid deterioration of the joints of her hands.” The Board finds this report to be relevant to appellant’s claim for osteoarthritis⁴ the Office was required a review of the merits of appellant’s case.

The decision of the Office of Workers’ Compensation Programs dated November 23, 1999 is set aside and the case remanded to the Office for a merit decision. The second issue listed is therefore moot.

Dated, Washington, DC
August 6, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

³ 20 C.F.R. § 10.608(b).

⁴ The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence, which may be necessary to discharge his or her burden of proof. The evidence need only be relevant and not previously considered by the Office. *See Paul Kovash*, 49 ECAB 350 (1998).