

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERRILL ROSS and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 00-2569; Submitted on the Record;
Issued June 25, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's requests for reconsideration without merit review of the claim.

The Office accepted that appellant sustained aggravation of left knee osteoarthritis causally related to her federal employment. By decision dated December 31, 1998, the Office terminated compensation on the grounds that appellant had refused an offer of suitable work. In a decision dated June 29, 1999, the Office denied modification.

In a decision dated October 19, 1999, the Office determined that the evidence submitted on reconsideration was repetitive and thus insufficient to require reopening the claim for merit review. By decision dated July 5, 2000, the Office again determined that the evidence submitted was not sufficient to warrant reopening the claim for merit review.

The Board's jurisdiction to review final decisions of the Office is limited. It is well established that an appeal must be filed no later than one year from the date of the Office's final decision.¹ As appellant filed her appeal on August 7, 2000, the only decisions over which the Board has jurisdiction on this appeal are the October 19, 1999 and July 5, 2000 decisions denying her requests for reconsideration.

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

¹ See 20 C.F.R. § 501.3(d).

² 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").

considered by the Office.³ 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.⁴

In this case, appellant did not submit any new and relevant evidence on the issues involving her refusal of suitable work. In a report dated July 13, 1999, Dr. Carlton West, an orthopedic surgeon, stated that appellant could resume work that was primarily sedentary, and previous restrictions should remain in effect permanently. Dr. West did not discuss the offered position that the Office found suitable in this case.

In a treatment note dated October 15, 1999, Dr. West stated that appellant had reached a plateau on July 13, 1999 when she was released to limited-duty work and that she was totally disabled until that time. Dr. West neither discussed the suitability of the job offered by the employing establishment nor explained the period of total disability.⁵ The underlying issue is whether appellant was capable of performing the duties of the offered position as of December 1998, and Dr. West does not provide any new and relevant information on this issue.

The Board finds that appellant did not submit new and relevant evidence, or show that the Office erroneously applied or interpreted a specific point of law, nor did she advance a new and relevant legal argument. Accordingly, the Board finds that she did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2), and therefore the Office properly denied the requests for reconsideration without merit review of the claim.

³ 20 C.F.R. § 10.606(b)(2).

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

⁵ In a December 22, 1998 report, Dr. West had stated that appellant reached a plateau and could work sedentary light duty.

The decisions of the Office of Workers' Compensation Programs dated July 5, 2000 and October 19, 1999 are affirmed.

Dated, Washington, DC
June 25, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member