

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERTA P. PHINNEY and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 99-2145; Submitted on the Record;
Issued May 14, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs, by its decision dated April 15, 1999, abused its discretion in refusing to reopen appellant's claim for merit review pursuant to 5 U.S.C. § 8128(a).

On May 15, 1996 appellant, then a 30-year-old purchasing agent, filed an occupational disease claim, alleging that she suffered from sick building syndrome, chemical sensitivity, rhinitis, upper respiratory infection, headache, fatigue and body aches as a result of working next to a "toxic waste site" and being exposed to airborne contaminants, including plastic fibers on the ceiling, diesel exhaust, glue, mold, dust mites and bacteria.¹

In a decision dated June 30, 1997, the Office denied appellant's claim, finding that appellant had failed to establish a clearly identified factor of her employment that caused her condition and, therefore, had not established fact of injury.

At appellant's request, a hearing was held on December 9, 1997. At the hearing, appellant's attorney narrowed the issue to whether appellant's condition was causally related to dust and molds in the work environment.

In her decision dated February 19, 1998, the hearing representative affirmed the Office's decision. The hearing representative noted that the environmental tests on appellant's work site were negative to allergens, including dust mites, molds and pollens. She also stated that the physicians of record were unaware of what in the workplace environment might be affecting appellant's condition.

¹ An earlier Form CA-2, which the employing establishment found was incomplete, was filed on April 17, 1996.

By letter dated January 27, 1999, appellant requested reconsideration. In a decision dated April 15, 1999, the Office denied appellant's request, finding that the evidence, submitted in support of reconsideration, was insufficient to warrant review of the prior decision.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.² Since appellant filed her appeal on June 7, 1999, the only decision over which the Board has jurisdiction on this appeal is the April 15, 1999 decision denying appellant's request for reconsideration on the merits.³

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁴ the Office regulations provide that a claimant may obtain review of the merits of the claim by submitting evidence or argument that (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.⁵ 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.

In this case, appellant has not raised any new arguments that the Office erroneously applied or interpreted a point of law. Nor has appellant submitted any new relevant and pertinent evidence not previously considered by the Office. Most of the evidence submitted by appellant regarding reconsideration was already considered by the Office in making its decision on the merits. The sole exception is appellant's January 4, 1999 letter of resignation, which is not relevant to the reasons that her claim was denied, *i.e.*, that appellant had not shown fact of injury.

Therefore, appellant has not established that the Office abused its discretion in denying appellant's request for a review on the merits under section 8128(a) of the Act.

² See 20 C.F.R. § 501.3(d)(2).

³ See *Jacqueline M. Nixon-Steward*, 52 ECAB _____ (Docket No. 99-1345, issued November 3, 2000).

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(2).

The decision of the Office of Workers' Compensation Programs dated April 15, 1999 is affirmed.

Dated, Washington, DC
May 14, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member