

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBRA K. MORIN and DEPARTMENT OF THE AIR FORCE,
DAVIS-MONTHAN AIR FORCE BASE, AZ

*Docket No. 99-2274; Submitted on the Record;
Issued May 4, 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 properly denied appellant's January 19, 1999 request for reconsideration.

In a decision dated January 26, 1998, the Office reviewed the merits of appellant's claim and found that she was not entitled to continuation of pay (COP) for an injury on March 16, 1990. The Office noted that appellant sustained a lumbar strain while in the performance of her duties on March 16, 1990 and filed a notice of traumatic injury on April 30, 1990.

On January 19, 1999 appellant requested reconsideration and offered the following arguments: that the Office failed to follow established laws for timely review;¹ that the reasonably prudent man test cannot be applied when access is denied and collusion exists at the management level; that management engaged in criminal misconduct; that local policy required only verbal notification; that her supervisor discriminated against her; and that the Office and the Board failed to read all of the pertinent documents relating to her reconsideration. Appellant argued that she was a victim of management's conspiracy to cover up criminal negligence and discrimination in denying COP by letting the time expire in order to save personnel costs.

On April 16, 1999 the Office denied reconsideration on the grounds that the evidence submitted in support of appellant's request was immaterial and repetitious in nature and insufficient to warrant a review of the prior decision.

The Board finds that the Office acted within its discretion in denying appellant's January 19, 1999 request for reconsideration.

¹ In a prior appeal, the Board held that the Office abused its discretion in failing to reopen appellant's case for merit review because the Office delayed its reconsideration decision beyond 90 days and jeopardized appellant's right to have a review of the merits of the case by the Board. Docket No. 95-1486 (issued October 8, 1997).

Section 10.606(b) of the Code of Federal Regulations² provides that an application for reconsideration, including all supporting documents, must: (1) be submitted in writing; and (2) set forth arguments and contain evidence that either -- (i) shows that the Office erroneously applied or interpreted a specific point of law, (ii) advances a relevant legal argument not previously considered by the Office, or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that, where the request is timely but fails to meet at least one of the standards described in 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 January 19, 1999 request for reconsideration set forth no argument and contained no evidence that either showed that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by the Office or constituted relevant and pertinent new evidence not previously considered by the Office. The Office properly determined that appellant's arguments were irrelevant or immaterial to whether she is entitled to COP.

In her request for reconsideration, appellant has essentially attempted to show that an exception should be made in her case for failing to file a claim for COP within 30 days of her employment injury. Because there is no provision in the Federal Employees' Compensation Act⁴ for excusing such a failure,⁵ appellant's arguments are insufficient to require the Office to review the merit of her case.

² 20 C.F.R. § 10.606(b).

³ *Id.* at § 608(b).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *William E. Ostertag*, 33 ECAB 1925, 1932 (1982).

The April 16, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 4, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member