

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT ANDRADE and U.S. POSTAL SERVICE,
POST OFFICE, Whitesboro, NY

*Docket No. 00-1692; Submitted on the Record;
Issued October 19, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs, by its March 21, 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 the Office abused its discretion.

On May 30, 1997 appellant, then a 50-year-old letter carrier, filed an occupational disease claim alleging that he suffered pain and numbness from his left shoulder down through his left hand and fingers, noting that "relationship not determined as of yet." The Office denied appellant's claim on December 13, 1997 on the grounds that the medical evidence failed to establish a causal relationship between his medical condition and factors of his employment. By letter dated November 19, 1998, appellant's representative requested reconsideration of the December 13, 1997 decision. By decision dated January 29, 1999, the Office, after a merit review, modified the December 13, 1997 decision finding that appellant failed to establish that he experienced the alleged factor of employment to which he attributed his condition, *i.e.*, carrying his mailbag on his left shoulder; and, therefore, fact of injury was not established. The Office also found that as such it was unnecessary to consider the medical evidence. By letter dated January 31, 2000, appellant requested reconsideration of the January 29, 1999 decision. By decision dated March 21, 2000, the Office denied review of the prior decision finding that the evidence submitted was irrelevant and immaterial.

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.¹ 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.²

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.³ Because more than one year has elapsed between the issuance of the Office's December 13, 1997 and January 29, 1999 decisions and April 14, 2000, the date appellant filed his appeal with the Board,⁴ the Board lacks jurisdiction to review the December 13, 1997 and January 29, 1999 decisions and any preceding decisions. Therefore, the only decision before the Board is the office's March 21, 2000 nonmerit decision denying appellant's appellation for a review of its January 29, 1999 decision.

In this case appellant, in support of his January 31, 2000 request for reconsideration, submitted his January 12, 2000 statement, pictured cover sheets to postal service literature and reports by Dr. Mark V. Smith, a Board-certified neurosurgeon. Appellant stated that contrary to the employing establishment's contention, a mailbag can be worn on the right or left shoulder and that he carried his on his left shoulder.

Appellant's January 12, 2000 statement is relevant to the factual issue of whether appellant carried his mailbag on his left shoulder while holding mail in his left hand as he alleged. The factual finding by the Office was that it was not possible to deliver mail carrying the mailbag on the left shoulder while holding mail in the left hand. The Office noted that appellant was seen on his route carrying his mailbag on the right shoulder. However, it was not stated that appellant had been observed over a long period of time and always had his mailbag on his right shoulder. Therefore, the fact that appellant was observed at some time carrying his mailbag on his right shoulder does not negate his claim that he routinely carried the bag on his left shoulder. In further support of this, appellant submitted cover sheets to postal literature showing pictures of carriers carrying mailbags on their left shoulders while holding mail, even large items, in the left hand.

As appellant submitted relevant new evidence not previously considered by the Office regarding factual findings, the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits of his claim. Therefore, the case must be remanded.

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

² 20 C.F.R. § 10.608(a).

³ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

⁴ Appellant's appeal was postmarked June 23, 1999.

The March 21, 2000 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for review of appellant's claim on the merits and to undertake any necessary development of the medical evidence.

Dated, Washington, DC
October 19, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member