

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KURT FLYNN and DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION, Shasta Lake, CA

*Docket No. 01-606; Submitted on the Record;
Issued October 1, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

On June 29, 1998 appellant, a 39-year-old natural resources specialist, filed a claim alleging that he sustained an emotional condition causally related to his federal employment. Appellant reported on the claim form that he was improperly denied the opportunity to take a promotion he had accepted. By decision dated March 18, 1999, the Office denied the claim, finding that appellant had not established a compensable work factor. In a decision dated September 3, 1999, an Office hearing representative affirmed the prior decision.

In a letter dated August 29, 2000, appellant requested reconsideration of his claim. By decision dated September 28, 2000, the Office determined that appellant had not submitted sufficient evidence to warrant merit review of the claim.

With respect to the Board's jurisdiction to review final decisions of the Office, 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 his appeal on December 18, 2000, the only decision over which the Board has jurisdiction on this appeal is the September 28, 2000 decision denying his request for reconsideration.

The Board finds that the Office properly denied appellant's request for reconsideration without merit review of the claim.

¹ See 20 C.F.R. § 501.3(d).

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 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 his request for reconsideration, appellant again argues that the employing establishment committed error with respect to a promotion. The evidence he submitted, however, does not support a claim of error. Appellant submitted, for example, emails from the Office of Personnel Management, a copy of 5 U.S.C. § 2302 (prohibited personnel practices), and a request for an investigation by the Office of the Inspector General. None of this evidence is new and relevant evidence on the issue of error by the employing establishment in an administrative matter.⁵ While the evidence does not have to establish a compensable work factor, it must be new and relevant evidence supporting the allegation of error in order to require reopening the claim for a merit review. The Board finds that appellant did not meet any of the requirements under section 10.606(b)(2) and therefore the Office properly denied the request for reconsideration without merit review of the claim.

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”).

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 An administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment. *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

The decision of the Office of Workers' Compensation Programs dated September 28, 2000 is affirmed.

Dated, Washington, DC
October 1, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member