

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of STEVEN ORR and DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE, Los Angeles, CA

*Docket No. 00-611; Submitted on the Record;  
Issued September 10, 2001*

---

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

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

On November 26, 1996 appellant filed a claim alleging that he sustained an emotional condition causally related to his federal employment as a customs inspector. By decision dated April 8, 1997, the Office denied the claim, finding that appellant had not submitted a detailed factual statement. In a decision dated June 26, 1997, the Office modified the basis for the denial of the claim to reflect that appellant had not established a compensable work factor. By decisions dated July 31 and October 9, 1997, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review.

In a decision dated July 16, 1998, the Office reviewed the case on its merits and denied modification. By decisions dated February 5 and July 21, 1999, the Office determined that appellant's requests for reconsideration were insufficient 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.<sup>1</sup> As appellant filed his appeal on October 12, 1999, the only decisions over which the Board has jurisdiction on this appeal are the February 5 and July 21, 1999 decisions denying his requests for reconsideration.

The Board finds that the Office properly refused to reopen the case for merit review in this case.

---

<sup>1</sup> 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,<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

In this case, appellant submitted several statements containing allegations of error by the Office and the employing establishment. Appellant did not, however, submit any new and relevant evidence with respect to compensable work factors. As noted above, the underlying merit decisions found that appellant had not substantiated compensable work factors. On reconsideration, appellant reiterates many of the allegations previously raised before the Office; his unsupported allegations do not constitute new and relevant evidence in support of his claim. The Board notes that appellant also submitted, for example, a copy of the employing establishment firearms policy, but the firearm issue had previously been raised and the policy itself does not support appellant's claim of error by the employing establishment.<sup>5</sup> There must be pertinent evidence not previously considered with respect to the establishment of a compensable work factor. The Board finds that appellant did not meet any of the requirements of section 10.606(b)(2), and therefore the Office properly refused to reopen the claim for merit review.

---

<sup>2</sup> 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").

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

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

<sup>5</sup> *Cf. Pamela I. Holmes*, 49 ECAB 581 (1998) (where the claimant submitted new and relevant evidence in the form of an administrative decision supporting an allegation of error by the employing establishment).

The decisions of the Office of Workers' Compensation Programs dated July 21 and February 5, 1999 are affirmed.

Dated, Washington, DC  
September 10, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member