

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD J. BECKLEY and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, Boston, MA

*Docket No. 01-541; Submitted on the Record;
Issued September 18, 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 denied appellant's request for merit review pursuant to 5 U.S.C. § 8128(a).

The only decision before the Board on this appeal is the Office's September 7, 2000 nonmerit decision denying appellant's request for a review on the merits under 5 U.S.C. § 8128(a) of its July 2, 1999 decision.¹ Because more than one year has elapsed between the issuance of the Office's October 2, 1995 merit decision and June 21, 1999, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the October 2, 1995 merit decision.²

The Board further finds that the Office in its September 7, 2000 decision properly denied appellant's request for consideration on the merits under 5 U.S.C. § 8128(a) on the basis that his request for reconsideration did not meet the requirements set forth under section 8128.³

Under section 8128(a) of the Federal Employees' Compensation Act,⁴ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,⁵ which provides that a claimant may obtain review of the merits if his written

¹ In the merit decision dated July 2, 1999, the Office denied appellant's request for modification of the hearing representative's October 16, 1998 decision. In the October 16, 1998 decision, the hearing representative affirmed a December 11, 1997 decision, which found that appellant had sustained a nonratable bilateral sensorineural hearing loss.

² See 20 C.F.R. § 501.3(d)(2).

³ See 20 C.F.R. § 10.606(b)(2)(i-iii).

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b) (1999)

application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(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 any application for review of the merits of the claim which fails to meet at least one of the standards described in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁶

In the present case, the Office denied appellant’s claim without conducting a merit review on the grounds that evidence submitted was irrelevant, immaterial and insufficient. In support of his request for reconsideration appellant submitted a May 24, 2000 audiogram signed by Charles J. Elia, an audiologist, and a March 25, 1999 audiogram signed by Celia Logsdon, an audiologist. However, an audiologist is not a physician within the meaning of section 8101(2)⁷ and a report from an audiologist, by itself, is insufficient to establish the extent of appellant’s hearing loss.⁸ Thus, appellant failed to submit any new and relevant evidence not previously considered by the Office

In the instant case, appellant submitted no new relevant and pertinent evidence in support of his June 6, 2000 request for reconsideration, nor did appellant show that the Office erroneously applied or interpreted a point of law. Accordingly, the Office properly denied appellant’s request for review on the merits.

⁶ 5 U.S.C. § 10.608(b).

⁷ 5 U.S.C. § 8101(2).

⁸ See *Howard P. Lane*, 36 ECAB 107 (1984).

The decision of the Office of Workers' Compensation Programs dated September 7, 2000 is hereby affirmed.

Dated, Washington, DC
September 18, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member