

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BETTY R. BOYD and U.S. POSTAL SERVICE,  
POST OFFICE, Riverdale, MD

*Docket No. 00-2528; Submitted on the Record;  
Issued April 12, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

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.

In the present case, the Office accepted that appellant sustained a low back strain on December 19, 1981. By decision dated August 15, 1984, the Office determined that appellant's employment-related disability had ceased by September 9, 1982. In a decision dated January 10, 1985, an Office hearing representative vacated the prior decision and remanded the case for further development of the medical evidence. By decision dated November 15, 1985, the Office found that appellant had no residual employment-related disability after September 9, 1982. The Office also indicated that further medical treatment was not authorized.

In a letter dated April 3, 2000, appellant requested reconsideration of the November 15, 1985 decision. By decision dated April 19, 2000, the Office determined that the request for reconsideration and the evidence submitted were not sufficient to reopen the case for merit review.

The Board finds that the Office properly denied the request for reconsideration without 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 her appeal on August 10, 2000, the only decision over which the Board has jurisdiction on this appeal is the April 19, 2000 decision denying her request for reconsideration.

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<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 regulations provide 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>

The Office based its November 15, 1985 decision on the medical evidence of record, finding that the evidence did not reveal an employment-related disability after September 9, 1982. With her request for reconsideration appellant submitted new medical evidence, including form reports (CA-20) dated February 13, 1996 and September 16, 1997, from Dr. Bahman Sadr, an orthopedic surgeon. The underlying issue in the case is whether appellant had disability from September 9, 1982 until her return to work in November 1985, causally related to the December 19, 1981 employment injury. Dr. Sadr does not address the issue and therefore his reports cannot be considered new and relevant evidence. Other medical evidence submitted was previously considered and is not sufficient to reopen the claim for merit review.

Appellant argued that she should have received compensation until her return to work because the employing establishment refused to offer her appropriate work until that time.<sup>5</sup> The Office decision denying her claim for compensation, however, was based on the medical evidence regarding her employment injury. Appellant did not submit new and relevant medical evidence on disability as of September 9, 1982. The Board notes that appellant also argues that she was actually paid compensation through June 11, 1983<sup>6</sup> and this would refute the Office's finding that disability had ceased by September 9, 1982. In a letter dated March 20, 1985, the Office explained that appellant had received a compensation payment in October 1983 for the period February 5 to June 11, 1982. Any reference to June 11, 1983 therefore appears to be a typographical error; even if the Office had inadvertently paid compensation after September 9, 1982, the findings of the Office and therefore the underlying merit issue would remain the same.

The Board finds that appellant did not submit new and relevant evidence, or show that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Accordingly, the Board finds that the Office properly denied her request for reconsideration without merit review of the claim.

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<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> The employing establishment terminated appellant's employment in August 1982; appellant indicated that her employment was reinstated pursuant to an arbitration award.

<sup>6</sup> A receipt of compensation payment dated October 28, 1983 indicates the period covered as February 5, 1982 to June 11, 1983.

The decision of the Office of Workers' Compensation Programs dated April 19, 2000 is affirmed.

Dated, Washington, DC  
April 12, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member