

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES O. JOHNSON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Albany, NY

*Docket No. 01-1090; Submitted on the Record;
Issued April 9, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

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.

The Office accepted that appellant sustained an aggravation of degenerative disc disease in the performance of duty on September 21, 1994. Appellant returned to work in a light-duty position in 1997. By decision dated September 24, 1998, the Office denied appellant's claim for a recurrence of increased disability commencing March 30, 1998. In a decision dated January 6, 2000, an Office hearing representative affirmed the prior decision.

By decision dated January 29, 2001, the Office determined that appellant's December 18, 2000 request for reconsideration was 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.¹ As appellant filed his appeal on February 27, 2001, the only decision over which the Board has jurisdiction on this appeal is the January 29, 2001 decision denying his request for reconsideration.²

The Board finds that the Office properly denied appellant's request for reconsideration.

¹ See 20 C.F.R. § 501.3(d).

² The Board notes on appeal that appellant has referred to other issues, such as a May 1999 claim for recurrence of disability. The only issue presented on appeal is whether the Office properly denied the request for reconsideration of the January 6, 2000 Office decision.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ 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.⁴ 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.⁵

In this case, appellant submitted medical reports from Dr. Norman R. Romanoff, a Board-certified internist, dated November 4, October 7 and May 7, 1999 and August 27 and April 9, 1998. All of these reports had previously been submitted and were considered by the hearing representative in the January 6, 2000 decision.⁶ Appellant did not submit any new medical evidence with his request for reconsideration. He argues that the medical evidence establishes a recurrence of increased disability, which is not a new and relevant legal argument. The December 18, 2000 request for reconsideration did not 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.

The Board finds that appellant did not meet any of the requirements of section 10.606(b)(2), and therefore Office properly denied the December 18, 2000 request for reconsideration without merit review of the claim.

³ 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.")

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

⁶ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case. *See Eugene F. Butler*, 36 ECAB 393 (1984).

The decision of the Office of Workers' Compensation Programs dated January 29, 2001 is affirmed.

Dated, Washington, DC
April 9, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member