

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DOLORES T. HERRIGES and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Denver, CO

*Docket No. 01-1498; Submitted on the Record;  
Issued April 17, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,  
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 right shoulder tendinitis causally related to her federal employment. By decision dated April 16, 1999, the Office terminated appellant's compensation for wage loss on the grounds that she had refused an offer of suitable work. In a decision dated January 18, 2000, an Office hearing representative affirmed the prior decision.

By decision dated March 2, 2001, the Office determined that appellant's January 10, 2001 request for reconsideration was insufficient to warrant merit review of the claim.

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

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 April 18, 2001, the only decision over which the Board has jurisdiction on this appeal is the March 2, 2001 decision denying her request for reconsideration.

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

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<sup>1</sup> See 20 C.F.R. § 501.3(d).

<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").

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 underlying merit decision was a termination of compensation based on a refusal of suitable work. The Office found that the medical evidence established that appellant could perform the offered position. On reconsideration appellant submitted medical evidence, but none of the evidence can be considered new and relevant to the issue presented. In reports dated February 15 and April 21, 1999, Dr. Shauna Wright, an osteopath, indicated that appellant could not perform the position. These reports were, however, before the Office and considered by the hearing representative in the January 18, 2000 decision. None of the medical evidence submitted on reconsideration is new or relevant to the issue of whether appellant was able to perform the offered position at the time of the suitable work determination. The Board accordingly finds that appellant did not meet the requirements of 20 C.F.R. § 10.606(b)(2)(iii). Moreover, appellant 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. Accordingly, the Board finds that the Office properly denied appellant's request for reconsideration without merit review of the claim.

The decision of the Office of Workers' Compensation Programs dated March 2, 2001 is affirmed.

Dated, Washington, DC  
April 17, 2002

Alec J. Koromilas  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<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).