

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DESIREE S. TURNER and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 01-2162; Submitted on the Record;
Issued April 25, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
DAVID S. GERSON

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.

On January 8, 1991 appellant, then a 35-year-old letter carrier, sustained a lower back injury when her postal vehicle was struck by a truck in the rear left side. Appellant stopped working on January 9, 1991. The Office accepted the claim for lumbar strain and paid appropriate compensation. She returned to light-duty work on February 22, 1991 for four hours per day, which was increased to six hours per day on January 3, 1992. Thereafter, appellant sustained intermittent recurrences of disability.

By decision dated March 23, 2000, the Office denied appellant's request for wage-loss compensation during the period June 24 through August 6, 1999 on the grounds that the medical evidence failed to establish that she had any disability due to her accepted employment injury.

On March 29, 2000 the Office issued a proposed notice of termination of medical and wage-loss benefits, which was finalized by decision dated May 2, 2000. In the May 2, 2000 decision, the Office terminated appellant's wage-loss benefits on the basis that the medical evidence established that she had no continuing residual disability from her accepted employment injury.¹

In an August 31, 2000 report, Robert E. Ruel, Jr., an attending Board-certified orthopedic surgeon, concluded that appellant should not perform her usual duties "as a letter carrier, as this could well have detrimental affects (sic) on her back condition."

¹ Appellant filed a recurrence claim for compensation beginning September 1, 2000 due to her accepted January 8, 1991 employment injury.

In a letter dated April 23, 2001 and received on April 30, 2001, appellant requested reconsideration of the Office's May 2, 2000 decision terminating her benefits. Appellant referred to reports dated April 19 and August 31, 2000 by Dr. Ruel to support her continuing disability due to her accepted employment injury.²

On May 24, 2001 the Office denied appellant's request for a merit review.

The only decision before the Board on this appeal is the Office's May 24, 2001 nonmerit decision denying appellant's request for a review on the merits under 5 U.S.C. § 8128(a) of its May 2, 2000 decision. Because more than one year has elapsed between the issuance of the Office's May 2, 2000 merit decision and August 27, 2001, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the May 2, 2000 merit decision.³

The Board finds that the Office properly determined appellant's request for reconsideration was insufficient to warrant merit review of the claim.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁴ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.⁵ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.⁶ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁷

With her request for reconsideration, appellant submitted no new evidence but referred to reports dated April 19 and August 31, 2000 by Dr. Ruel. The Office received a copy of Dr. Ruel's August 31, 2000 report subsequent to its termination of benefits and prior to appellant's reconsideration request. Dr. Ruel, in his August 31, 2000 report, opined that appellant should not perform her usual duties as a letter carrier as these duties "could well have detrimental affects (sic) on her back condition." The report supports the concern that further injury may be incurred. However, the fear of a future injury is not compensable under the Act.⁸ Accordingly, this report is not relevant to the issue of continuing disability. Consequently, the

² The Board notes that a review of the record fails to find a copy of the April 19, 2000 report by Dr. Ruel, which is mentioned by appellant.

³ See 20 C.F.R. § 501.3(d)(2).

⁴ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. §§ 10.606(b)(2).

⁶ 20 C.F.R. § 10.607(a).

⁷ 20 C.F.R. § 10.608(b).

⁸ *Mary A. Geary*, 43 ECAB 300 (1991).

medical evidence submitted in support of appellant's request for reconsideration of the May 2, 2000 decision does not constitute a basis for reopening her claim for further merit review.⁹

The May 24, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 25, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

⁹ The Board notes that the record contains medical evidence submitted subsequent to the Office's May 24, 2001 nonmerit decision. However, pursuant to 20 C.F.R. § 501.2(c), the Board's review of a case is limited to the evidence in the case record, which was before the Office at the time of its final decision.