

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HANS ROTHER and U.S. POSTAL SERVICE,
POST OFFICE, Southeastern, PA

*Docket No. 02-84; Submitted on the Record;
Issued April 8, 2002*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's May 29, 2001 request for reconsideration.

In the prior appeal of this case,¹ the Board noted that the most recent review of the merits of appellant's claim for stress, anxiety and low back pain was the Office's January 7, 1997 decision, which found that the evidence failed to establish fact of injury. The Board found that appellant's April 16, 1999 request for reconsideration was untimely and failed to demonstrate clear evidence of error in the Office's decision.²

On May 29, 2001 appellant wrote to the Office, as follows:

“[The Clerk of the Board], Employees' Compensation Appeals Board in Washington, D.C. informs me that my request for reconsideration of the Board's [d]ecision and [o]rder which was issued January 8, 2001,³ was not received within the 30-day period that the Board may entertain a [p]etition for [r]econsideration of its [d]ecision.

“[The Clerk of the Board] advised me, my only recourse for action at this time would be to submit a request for reconsideration to you.

“Herewith, I request reconsideration of my claim.”

¹ Docket No. 00-68 (issued November 2, 2000).

² The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

³ The Board issued its decision on November 2, 2000.

In a decision dated September 24, 2001, the Office denied appellant's request for reconsideration. The Office found that his request neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant a review of the Office's prior decision. The Office advised that any future request for reconsideration must be made within one year from the original decision and must be accompanied by statements or evidence as described above.

The Board finds that the Office properly denied appellant's May 29, 2001 request for reconsideration.

When the Office receives a request to reconsider one of its prior decisions, the standard for determining whether to grant the request depends on when the request was filed. If the claimant filed a request for reconsideration within one year of a merit decision in his case, the Office will reconsider its decision if the request (1) shows that Office erroneously applied or interpreted a specific point of law, (2) advances a relevant legal argument not previously considered by the Office, or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁴

In the May 29, 2001 letter, appellant merely noted that he was making a request for reconsideration, without evidence or argument presented to show that the Office erroneously applied a point of law, advancing a relevant legal argument not previously considered or submitting evidence relevant and pertinent to the denial of his claim.⁵

It is a matter of discretion on the part of the Office whether to reopen a case for further consideration.⁶ As appellant's request for reconsideration failed to satisfy even the standard for obtaining a merit review of his claim, the Board finds that the Office properly denied the request without reopening the case for review on the merits.⁷

⁴ 20 C.F.R. § 10.606(b) (1999).

⁵ See *Santino J. Pipitone*, 29 ECAB 887 (1978); *Eladio Joel Abrera*, 28 ECAB 401 (1977) (the Office properly denied requests for reconsideration as *prima facie* insufficient to warrant review where the claimant submitted no evidence and advanced no argument).

⁶ See *Daniel O'Toole*, 1 ECAB 107 (1948).

⁷ 20 C.F.R. § 10.608(b).

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

Dated, Washington, DC
April 8, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member