

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARVAY SMITH and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 01-864; Oral Argument Held July 17, 2002;
Issued August 19, 2002*

Appearances: *Arvay Smith, pro se; Jim C. Gordon, Jr., Esq.*, for the Director, Office of
Workers' Compensation Programs.

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.

On April 12, 1996 appellant, then a 47-year-old distribution clerk, filed a claim alleging that she sustained an emotional condition causally related to her federal employment. In a decision dated November 26, 1996, the Office denied the claim, finding that appellant had not substantiated any compensable work factors as contributing to an emotional condition. By decision dated February 4, 1998, the Office reviewed the case on its merits and denied modification.

In a letter dated February 2, 1999, appellant requested reconsideration of her claim. She submitted an undated statement from a coworker, Carolyn Burke.

By decision dated February 11, 2000, the Office determined that appellant's 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.¹ As appellant filed her appeal on February 11, 2001, the only decision over which the

¹ See 20 C.F.R. § 501.3(d).

Board has jurisdiction on this appeal is the February 11, 2000 decision denying her request for reconsideration without 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,² 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.³ 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.⁴

In this case, appellant submitted a statement from a coworker, Ms. Burke. The statement does not, however, provide new and relevant evidence with respect to a compensable work factor. Ms. Burke notes an April 12, 1996 incident in which appellant overheard an American Express employee discussing with a coworker a prior incident involving appellant. According to Ms. Burke, appellant asked the American Express employee "why do n[o]t you tell the truth" regarding the incident; the statement also reported that the American Express employee later indicated that he had been disciplined for the incident with appellant.

Appellant had previously submitted factual evidence with respect to an altercation with the American Express employee, as well as allegations regarding the April 12, 1996 incident and subsequent disciplinary action. The Office had addressed these allegations and found that they did not support a finding of error or abuse by the employing establishment.

The statement from Ms. Burke does not provide any new and relevant evidence with respect to error or abuse by the employing establishment, or otherwise support a compensable work factor in this case. The Board finds that appellant did not meet any of the requirements of section 10.606(b)(2), and therefore the Office properly denied merit review of the claim.

² 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").

³ 20 C.F.R. § 10.606(b)(2).

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

The decision of the Office of Workers' Compensation Programs dated February 11, 2000 is affirmed.

Dated, Washington, DC
August 19, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member