

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. 02-248; Oral Argument Held July 17, 2002;
Issued August 20, 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.

The case has been before the Board on prior appeals. In a decision dated May 31, 1988, the Board affirmed decisions of the Office dated April 1 and September 18, 1996, finding that the weight of the medical evidence established that appellant's intermittent disability for work on or after April 9, 1981 was not causally related to her employment injuries of January 30, 1975 and October 6, 1977.¹ In a separate decision also dated May 31, 1988, the Board affirmed a May 19, 1987 Office decision, finding that appellant did not sustain a disabling medical condition as a result of a November 4, 1986 employment incident.² By decision dated March 29, 1999, the Board affirmed an April 15, 1996 Office decision on the same issues; the Board found no disability after April 9, 1981 causally related to either the 1975 or 1977 injuries and no disabling medical condition causally related to a November 4, 1986 employment incident.³ The history of the case is set forth in the Board's prior decisions and is incorporated herein by reference.

On March 28, 2000 appellant requested reconsideration of her claim. In a decision dated July 5, 2000, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review.

¹ Docket No. 87-676.

² Docket No. 87-1627.

³ Docket No. 96-2288.

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.⁴ As appellant filed her appeal on June 29, 2001, the only decision over which the Board has jurisdiction on this appeal is the July 5, 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,⁵ 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;

“(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].”⁶

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.⁷

In this case, appellant submitted a hospital note dated March 13, 2000.⁸ The note indicates that appellant received cervical spondylosis treatment, but does not discuss her employment injuries or provide an opinion with respect to an employment-related condition. The underlying medical issues in the case are whether there was disability after April 9, 1981 resulting from the 1975 or 1977 employment injuries or whether appellant had disability from a November 4, 1986 employment incident. The Board finds that the evidence submitted is not relevant and pertinent to the underlying issues. It is, therefore, not sufficient to warrant reopening the case for merit review of the claim. Appellant's request for reconsideration did not meet any of the requirements of section 10.606(b)(2) and the Office properly denied the request for reconsideration without merit review of the claim.

⁴ See 20 C.F.R. § 501.3(d).

⁵ 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”).

⁶ 20 C.F.R. § 10.606(b)(2).

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

⁸ The physician's signature is illegible.

The decision of the Office of Workers' Compensation Programs dated July 5, 2000 is affirmed.

Dated, Washington, DC
August 20, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member