

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TINA M. VALDEZ and U.S. POSTAL SERVICE,
POST OFFICE, Bakersfield, CA

*Docket No. 02-2095; Submitted on the Record;
Issued December 31, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for reconsideration, constituted an abuse of discretion.

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office to reopen appellant's case for reconsideration of the merits of his claim, did not constitute an abuse of discretion.

The only decision before the Board on this appeal is the Office's May 8, 2002 decision denying appellant's request for reconsideration of an Office decision dated March 27, 2001.¹ Because more than one year has elapsed between the issuance of the Office's March 27, 2001 merit decision and August 8, 2002, the date of appellant's request for an appeal with the Board, the Board lacks jurisdiction to review the March 27, 2001 decision.²

¹ An April 17, 2002 merit decision regarding denial of an increase in appellant's schedule award has not been appealed to the Board in appellant's extensive pleadings. Appellant had previously been granted a schedule award for a 21 percent permanent impairment of her right upper extremity, and no greater degree of impairment had been demonstrated. By decision dated March 27, 2001, the Office denied appellant's claim for a recurrence of disability commencing October 28, 1999.

² See 20 C.F.R. § 501.3(d)(2).

The Office procedures pertaining to the requirements for obtaining a review of a case on its merits under 5 U.S.C. § 8128(a), state as follows:

“(b) The application for reconsideration, including all supporting documents, must:

- (1) Be submitted in writing;
- (2) Set forth arguments and contain evidence that either:
 - (i) Shows that [the Office] erroneously applied or interpreted a specific point of law;
 - (ii) Advances a relevant legal argument not previously considered by [the Office]; or
 - (iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”³

To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above-mentioned standards, the Office will deny the request for reconsideration without reopening the case for review on the merits.⁵

The Office’s March 27, 2001 decision denied appellant’s claim for a recurrence of disability commencing October 28, 1999.

The Office found that no change in the nature and extent of her injury-related condition or change in the nature and extent of her light-duty job requirements had been demonstrated. Appellant had been reassigned from her previous light-duty position effective November 1, 1999 to mail processing machine maintenance, which was also within her physical work restrictions, and she had been provided training for the new position. However, she ceased work on October 28, 1999 and alleged a recurrence of total disability.

In support of her reconsideration request, appellant submitted argument, contending that at the time she was reassigned, November 1999, she had an emotional condition and refused to report to work due to stress. Appellant claimed that the employing establishment knew about her stress condition.⁶ Appellant also argued that her application for disability retirement had been approved by Office of Personnel Management (OPM) and she contended that this finding could not be made without a factual determination that the employing establishment was unable to

³ 20 C.F.R. § 10.606(b)(1), (2).

⁴ 20 C.F.R. § 10.607(a).

⁵ 20 C.F.R. § 10.608(b); *see Mohamed Yunis*, 46 ECAB 827 (1995); *Elizabeth Pinero*, 46 ECAB 123 (1994); *Joseph W. Baxter*, 36 ECAB 228 (1984).

⁶ Appellant’s claim had been accepted only for bursitis of the right shoulder with an acromioplasty.

accommodate her medical conditions, which allegedly included right shoulder dislocation, right shoulder bursitis and right knee strain. Appellant alleged that this constituted new material evidence entitling her to a merit review.

The Board finds that appellant failed to show that the Office erroneously applied or interpreted a specific point of law; she failed to advance a relevant legal argument not previously considered by the Office; and she failed to submit evidence which constituted relevant and pertinent new evidence not previously considered by the Office. No emotional condition has been accepted as being employment related in this claim. Therefore, the issue of whether or not appellant had an emotional condition on November 1, 1999 is irrelevant to whether or not she sustained a recurrence of total disability commencing October 28, 1999 due to the accepted injury. The granting of OPM benefits has no relevancy to appellant's claim for a recurrence of disability. The Board has held that the findings of other governmental agencies are not determinative with regard to compensability arising under the Federal Employees' Compensation Act, and the Office is not bound by such findings and conclusions.⁷

The Office found that these arguments were not relevant to the issue of the Office's March 27, 2001 decision which was whether or not appellant became disabled for light-duty work *vis-à-vis* a recurrence of total disability commencing October 28, 1999. The Board finds that these arguments do not constitute a basis for reopening her claim for further merit review. The Office properly denied appellant's request for reconsideration.

Accordingly, the decision of the Office of Workers' Compensation Programs dated May 8, 2002 is hereby affirmed.

Dated, Washington, DC
December 31, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁷ See *Ernest J. Malagrida*, 51 ECAB 287 (2000); *Irene St. John*, 50 ECAB 521 (1999); *Wayne E. Boyd*, 49 ECAB 202 (1997).