

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT J. STABB and DEPARTMENT OF THE INTERIOR,
BUTTE FALLS RANGER DISTRICT, Butte Falls, OR

*Docket No. 01-975; Submitted on the Record;
Issued January 15, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration without merit review of the claim.

On November 13, 1998 appellant, then a 50-year-old forester, filed an occupational disease claim (Form CA-2) alleging that his cancer was caused by his exposure to herbicides used in his federal employment.

By decision dated April 26, 1999, the Office denied appellant's claim on the basis that he failed to establish a causal relationship between his cancer and factors of his employment.

In a letter dated May 18, 1999, appellant requested a written review of the record by an Office hearing representative.

By decision dated September 16, 1999, the hearing representative affirmed the denial of appellant's claim.

In a letter dated November 10, 1999, appellant requested reconsideration and submitted evidence in support of his request.

By merit decision dated February 4, 2000, the Office denied appellant's request for reconsideration.

On October 5, 2000 appellant requested reconsideration. In support thereof he submitted a September 20, 2000 letter from Dr. Ashley S. Peterson, an attending Board-certified family practitioner and an October 27, 1999 report by Dr. Jere L. Sandefur, a Board-certified therapeutic radiologist, which were previously submitted and a copy of the Agent Orange Act of 1991, Public Law 102-4 and other regulatory materials.

By decision dated December 4, 2000, the Office determined that the evidence submitted was insufficient to warrant reopening the claim for merit review.

The Board's jurisdiction to review final decisions of the Office is limited. 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 his appeal on February 21, 2001, the only decision over which the Board has jurisdiction on this appeal is the December 4, 2000 decisions denying his request for reconsideration.

The Board finds that the Office improperly denied appellant's request for reconsideration.

Under section 8128(a) of the Federal Employees' Compensation Act,² the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,³ which provides that a claimant may obtain review of the merits if her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁴

The Board finds that appellant submitted relevant and pertinent evidence not previously considered by the Office when he submitted Dr. Peterson's September 20, 2000 report. This report is dissimilar from his November 1, 1999 report as there is more discussion as to the causal connection between appellant's cancer and employment factors. Thus, the September 20, 2000 report is relevant to the issue of causal relationship between appellant's disability and his federal employment. Consequently, Dr. Peterson's report is sufficient to require the Office to conduct a merit review of the case.

¹ See 20 C.F.R. § 501.3(d).

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b) (1999).

⁴ 20 C.F.R. § 10.608(b).

The decision of the Office of Workers' Compensation Programs dated December 4, 2000 is hereby set aside and the case remanded for further proceedings consistent with the above opinion.

Dated, Washington, DC
January 15, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member