

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KAREN D. GROSS and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Washington, DC

*Docket No. 01-1290; Submitted on the Record;  
Issued January 18, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

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

In this case, the Office accepted that appellant sustained a left foot sprain and plantar fasciitis in the performance of duty. By decision dated January 12, 1998, the Office denied appellant's request to change her physician. In a decision dated September 8, 1999, an Office hearing representative affirmed the prior decision.

By decision dated December 6, 2000, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

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.<sup>1</sup> As appellant filed her appeal on February 26, 2001 the only decision over which the Board has jurisdiction on this appeal is the December 6, 2000 decision denying her request for reconsideration.

The Board finds that the Office properly denied appellant's 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,<sup>2</sup> 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

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<sup>1</sup> See 20 C.F.R. § 501.3(d).

<sup>2</sup> 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.")

considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>3</sup> 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.<sup>4</sup>

In this case, appellant submitted a September 5, 2000 request for reconsideration and medical evidence with respect to her continuing treatment. She reiterated her previous assertion that her attending physician, Dr. James H. Graeter, an orthopedic surgeon, was not providing adequate care. Appellant did not submit any new and relevant evidence on the issue presented. The medical evidence submitted does not address the treatment provided by Dr. Graeter. Appellant indicated that she was submitting an audio tape recording during an examination by him, but the record indicates that she did not submit the tape and it is not of record.<sup>5</sup>

The Board finds that appellant did not meet any of the requirements of section 10.606(b)(2) and, therefore, the Office properly denied the reconsideration request without merit review of the claim.

The December 6, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
January 18, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Member

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<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

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

<sup>5</sup> An Office claims examiner indicated that appellant was advised that she needed the permission of anyone recorded on the tape and she did not submit any audio evidence.