

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYNN M. MALIZIA and U.S. POSTAL SERVICE,
POST OFFICE, Williamsport, PA

*Docket No. 01-1520; Submitted on the Record;
Issued January 24, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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 Office accepted that appellant sustained acute right trapezius and cervical strains in the performance of duty on September 2, 1992. In a decision dated March 25, 1997, the Office determined that appellant's light-duty position represented her wage-earning capacity. By decision dated December 13, 1999, the Office terminated compensation benefits. In a decision dated April 7, 2000, an Office hearing representative affirmed the termination decision.

In a decision dated April 11, 2001, the Office determined that appellant's January 5, 2001 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.¹ As appellant filed her appeal on May 3, 2001, the only decision over which the Board has jurisdiction in this appeal is the April 11, 2001 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,² the Office's regulations provides that a claimant may

¹ See 20 C.F.R. § 501.3(d).

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.")

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 an October 24, 2000 report from Dr. Ronald DiSimone, an orthopedic surgeon, diagnosing chronic cervical strain and right trapezius strain. Dr. DiSimone opined that appellant's condition was the direct result of her work injury, as were her work restrictions. The record indicates, however, that Dr. DiSimone had previously opined that appellant had permanent work restrictions as a result of her work injury. In a notice of proposed termination dated October 12, 1999, the Office had acknowledged Dr. DiSimone's opinion, but found that the weight of the evidence was represented by Dr. Joseph Sgarlat, an orthopedic surgeon. Dr. DiSimone's October 24, 2000 opinion does not provide any additional details or medical reasoning to support his opinion; it therefore cannot be considered relevant and pertinent evidence not previously considered by the Office.

Appellant also submitted a functional capacity evaluation dated May 31, 2000 from a physical therapist. This report is of no probative medical value as a physical therapist is not considered a "physician" under the Federal Employees' Compensation Act.⁵

In the January 5, 2001 reconsideration request, appellant indicated his disagreement with the Office's conclusion that Dr. Sgarlat represented the weight of the evidence, but appellant did not show that the Office erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument. The additional evidence submitted is not, for the reasons stated above, considered to be new and relevant medical evidence. Accordingly, the Board finds that appellant has not met any of the requirements of section 10.606(b)(2), and the Office properly refused to reopen the claim for a merit review.

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).

⁵ *See Barbara J. Williams*, 40 ECAB 649 (1989); 5 U.S.C. § 8101(2).

The decision of the Office of Workers' Compensation Programs dated April 11, 2001 is affirmed.

Dated, Washington, DC
January 24, 2002

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member