

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HERBERT K. DeJOURDAN and DEPARTMENT OF THE ARMY,
FORT DRUM, Watertown, NY

*Docket No. 01-1535; Submitted on the Record;
Issued January 23, 2002*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

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.

In a prior appeal, the Board modified a June 2, 1997 Office decision, to reflect that compensable work factors had been substantiated and affirmed the denial of the claim on the grounds that appellant had not established that the work factors contributed to an emotional or cardiac condition.¹ The history of the case is contained in the Board's prior decision and is incorporated herein by reference.

In a letter dated March 28, 2001, appellant requested reconsideration of the claim. By decision dated April 26, 2001, the Office determined that the evidence 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.² As appellant filed his appeal on May 4, 2001, the only decision over which the Board has jurisdiction on this appeal is the April 26, 2001 decision denying his request for reconsideration.

The Board finds that the Office properly denied appellant's request for reconsideration without merit review of the claim.

¹ Docket No. 98-1590 (issued March 29, 2000). By decision dated July 20, 2000 (Docket No. 00-1900), the Board dismissed appellant's appeal for lack of jurisdiction over a final decision.

² See 20 C.F.R. § 501.3(d).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ 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 considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ 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.⁵

Appellant did not meet any of the above requirements for reopening his case for merit review. In a report dated February 3, 1998, Dr. Stephen Fitzgerald, a clinical psychologist, stated that appellant's "employment ... is the primary contributing factor in [appellant's] stress condition." Dr. Fitzgerald had previously opined, in a November 21, 1996 report, that appellant had a stress condition related to his employment and his new report does not provide any additional information regarding specific compensable work factors or other relevant evidence.

In a fitness-for-duty report dated April 1, 1998, Dr. Charles Moehs, an employing establishment physician, noted in his history appellant's complaints of a stressful work environment. Dr. Moehs does not refer to the specific compensable work factors, nor provide an opinion on a diagnosed condition causally related to compensable work factors.

The Board accordingly finds that appellant did not submit new and relevant evidence in this case. He did not meet any of the requirements of section 10.606(b)(2) and, therefore, the Office properly refused to reopen the claim for merit review.

³ 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").

⁴ 20 C.F.R. § 10.606(b)(2).

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

The April 26, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 23, 2002

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member