

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIE MAE JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Hackensack, NJ

*Docket No. 01-2127; Submitted on the Record;
Issued June 12, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to warrant merit review.

The Office accepted that appellant sustained a concussion and scalp contusion in the performance of duty on November 20, 1980. By decision dated April 24, 2000, the Office terminated compensation for medical benefits and wage loss. The Office found that the weight of the medical evidence was represented by Dr. Frederick Weisbrot, a neurologist serving as a second opinion physician.

In a decision dated May 11, 2001, the Office determined that appellant's March 24, 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 August 7, 2001, the only decision over which the Board has jurisdiction on this appeal is the May 11, 2001 decision denying her request for reconsideration.

The Board finds that appellant is entitled to a merit review of her 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 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

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").

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

With her request for reconsideration, appellant submitted additional medical evidence, including an October 18, 2000 report from Dr. Alan Clark, a neurologist. In its termination decision, the Office had noted that appellant had not submitted medical evidence regarding her treatment since 1997. Dr. Clark provided a history of the 1980 injury, and noted his treatment since 1997. He concluded that appellant suffered from headache, seizures, neck and lower back pain as a chronic residual of the injury,⁵ noting the 20-year history of postinjury complaints. Dr. Clark also discussed disability for work; he stated that it was doubtful that appellant could work full time, although the lack of objective evidence tended to negate her insistence that she could not work at all.

The Office interpreted Dr. Clark's statements on disability as being of diminished probative value to her claim. The initial issue presented, however, is whether the report was new and relevant to the underlying issues. The Office terminated both medical benefits and wage-loss compensation in this case. Dr. Clark provides a history of injury and medical treatment, and an opinion that appellant continued to have residuals of the employment injury. The October 18, 2000 report is clearly relevant to the underlying medical issues; the assessment of its probative value is appropriately made in the context of a merit review of the claim. The Board finds that appellant did submit new and relevant evidence, and the case will be remanded to the Office for a merit decision.

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 Dr. Clark refers to a 1997 injury date, but his history demonstrates his awareness that the injury occurred in 1980.

The decision of the Office of Workers' Compensation Programs dated May 11, 2001 is set aside and the case remanded for a merit decision consistent with this decision of the Board.

Dated, Washington, DC
June 12, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member