

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA M. HERNANDEZ and U.S. POSTAL SERVICE,
POST OFFICE, Plymouth, MA

*Docket No. 02-239; Submitted on the Record;
Issued June 18, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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 low back, right shoulder and right trapezius/rotator cuff strains, as well as whiplash, as a result of a motor vehicle accident while in the performance of duty on January 21, 1997. By decision dated May 17, 1999, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence was insufficient to establish a ratable permanent impairment. In a decision dated June 12, 2000, an Office hearing representative affirmed the schedule award denial.

By letter dated June 12, 2001, appellant requested reconsideration of her claim. In a decision dated September 17, 2001, the Office determined that the request was not sufficient to reopen the claim for merit review.

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 November 15, 2001 the only decision over which the Board has jurisdiction on this appeal is the September 17, 2001 decision denying her request for reconsideration.

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

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 the June 12, 2001 reconsideration request, appellant's representative indicated that new medical evidence and a memorandum of law would be submitted. The record does not, however, contain any additional evidence submitted prior to September 17, 2001.⁵ Appellant did not provide any additional medical evidence or argument to support the reconsideration request. As appellant did not meet any of the requirements of section 10.606(b)(2), the Office properly determined that the reconsideration request was insufficient to warrant merit review of the claim.

The decision of the Office of Workers' Compensation Programs dated September 17, 2001 is affirmed.

Dated, Washington, DC
June 18, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

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 The Board's jurisdiction is limited to evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).