

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RITA V. JARVIS and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

*Docket No. 02-282; Submitted on the Record;
Issued June 4, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The only decision before the Board on this appeal is the Office's September 12, 2001 decision denying appellant's application for a reconsideration of the Office's July 20, 2000 merit decision.¹ Because more than one year has elapsed between the issuance of the Office's July 20, 2000 merit decision and December 11, 2001, the postmarked date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the July 20, 2000.²

The Federal Register dated November 25, 1998 advised that effective January 4, 1999, certain changes to 20 C.F.R. Parts 1 to 399 would be implemented. The revised Office

¹ By this decision, the Office denied modification of a February 6, 1997 decision which denied modification of a December 19, 1995 decision which denied modification of a December 19, 1995 decision which denied modification of a November 28, 1994 decision which denied modification of a September 23, 1993 decision which denied modification of a June 29, 1992 decision which denied modification of an April 30, 1991 decision which affirmed an October 17, 1990 decision finding that appellant had failed to establish fact of injury. On March 12, 1998 the Office denied further review of appellant's case on its merits, which was reversed by the Board by decision dated February 17, 2000.

² See 20 C.F.R. § 501.3(d)(2).

procedures pertaining to the requirements for obtaining a review of a case on its merits under 5 U.S.C. § 8128(a), state as follows:

“(b) The application for reconsideration, including all supporting documents, must:

- (1) Be submitted in writing;
- (2) Set forth arguments and contain evidence that either:
 - (i) Shows that OWCP erroneously applied or interpreted a specific point of law;
 - (ii) Advances a relevant legal argument not previously considered by OWCP; or
 - (iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”³

To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ The Board has found that the imposition of the one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under section 8128(a) of the Act.⁵ When a claimant fails to meet one of the standards contained in section 10.606(b), the Office will deny the application for reconsideration without reopening the case for review on the merits.⁶

In support of her July 19, 2001 reconsideration request, appellant argued that the Office did not follow instructions given by the Board upon remand to review Dr. Feldner’s January 15, 1998 report in conjunction with the other reports of record and determine whether a *prima facie* case had been established, and did not apply the appropriate legal standard. No new medical reports were submitted.

The Office then conducted a limited review of these arguments and found, and the Board now concurs, that they have no basis in fact as the January 15, 1998 report of Dr. Feldner was clearly considered by the Office on its merits in conjunction with the other evidence of record,⁷

³ 20 C.F.R. § 10.606 (b)(1), (2).

⁴ 20 C.F.R. § 10.607(a).

⁵ *Diane Matchem*, 48 ECAB 532 (1997); *Jeanette Butler*, 47 ECAB 128 (1995); *Mohamed Yunis*, 46 ECAB 827 (1995); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁶ *See* 20 C.F.R. § 10.608(b).

⁷ The Office specifically addressed this January 15, 1998 report and its deficiencies in its memorandum to the Director accompanying its July 20, 2000 decision.

as directed by the Board, for its July 20, 2000 decision on the case merits. In that decision the Office found that appellant failed to establish a *prima facie* case.

Upon review the Office found, and the Board now agrees, that since these arguments are without substance, they do not constitute a basis for reopening a claim for further merit review. The Office properly denied appellant's application for reopening her case for a further review on its merits.

In the present case, appellant has not established that the Office abused its discretion by denying her request for review of its July 20, 2000 decision on its merits.

Accordingly, the decision of the Office of Workers' Compensation Programs dated September 12, 2001 is hereby affirmed.

Dated, Washington, DC
June 4, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member