

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYNN BETTENCOURT and DEPARTMENT OF THE NAVY,
LONG BEACH NAVAL SHIPYARD, Long Beach, CA

*Docket No. 02-1392; Submitted on the Record;
Issued October 28, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's February 27, 2001 request for reconsideration was insufficient to warrant merit review of the claim.

The case was before the Board on a prior appeal. In a decision dated December 23, 1998, the Board set aside a decision of the Office dated March 31, 1995.¹ The Board found that, although the Office had met its burden of proof to terminate compensation effective March 6, 1994, additional evidence submitted had created a conflict in the medical evidence as to whether appellant continued to have an employment-related condition after March 6, 1994. The history of the case is provided in the Board's prior decision and is incorporated herein by reference.

In a decision dated April 8, 1999, the Office determined that the medical evidence did not establish an employment-related disability or condition after March 6, 1994. In a letter dated April 6, 2000, appellant requested reconsideration and submitted additional evidence. By decision dated May 2, 2000, the Office reviewed the case on its merits and denied modification of the prior decision.

By letter dated February 27, 2001, appellant again requested reconsideration. In a decision dated May 8, 2001, the Office determined that the evidence submitted 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 8, 2002, the only decision over which the Board has jurisdiction is the May 8, 2001 decision denying his request for reconsideration.

¹ Docket No. 96-1364.

² See 20 C.F.R. § 501.3(d).

The Board finds that the Office properly determined that appellant's request for reconsideration was not sufficient to warrant 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,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

In the February 27, 2001 reconsideration request, appellant restated legal arguments that had previously been raised in the April 6, 2000 reconsideration request. He again indicated his disagreement with the Office's findings, without advancing a new and relevant legal argument.

Appellant submitted a new medical report dated February 5, 2001 from Dr. Peter Weingold, a psychiatrist. Dr. Weingold quotes statements by the Office claims examiner in the May 2, 2000 decision, and indicates his disagreement with the Office findings both with respect to his prior report, as well as the report of Dr. Jeffrey Moran, the psychiatrist selected as an impartial medical specialist. Dr. Weingold opined that the MMPI (Minnesota Multiphasic Personality Inventory) cited by Dr. Moran was invalid, that the Wahler Physical Symptoms examination demonstrated that appellant's anxiety did not stem from perceptions of physical infirmity, and that Dr. Moran failed to note clear psychiatric symptoms.

The Board notes that Dr. Weingold had previously submitted a report dated April 2, 2000, that was reviewed by the Office in the May 2, 2000 merit decision. In the April 2, 2000 report, Dr. Weingold provided results on examination and also a detailed review of Dr. Moran's report, including such issues as the MMPI and other findings. The February 5, 2001 report does not provide any new and relevant evidence with respect to the underlying medical issues in the case. Dr. Weingold reiterates his disagreement with Dr. Moran, without providing any pertinent medical evidence that had not previously been discussed in his April 2, 2000 report. The Board finds that appellant failed to submit relevant and pertinent evidence not previously considered, nor did he meet any of the requirements of section 10.606(b)(2). Accordingly, the Office properly determined that a merit review was not warranted in this case.

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 decision of the Office of Workers' Compensation Programs dated May 8, 2001 is affirmed.

Dated, Washington, DC
October 28, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member