

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DELORES E. SANDERS-CHAMPION and U.S. POSTAL SERVICE,
POST OFFICE, Royal Oak, MI

*Docket No. 02-1699; Submitted on the Record;
Issued April 9, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
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 of the claim.

The case was before the Board on a prior appeal. In a decision dated July 3, 2000, the Board found that appellant's request for reconsideration was timely; a May 27, 1997 Office decision was set aside and the case remanded to the Office. The history of the case is provided in the Board's prior decision and is incorporated herein by reference.

In a decision dated February 9, 2001, the Office reviewed the case on its merits and denied modification of a March 19, 1996 Office decision.

By letter dated February 6, 2002, appellant requested reconsideration of her claim. She submitted a brief report dated January 22, 2002 from Dr. Susan Rice, an osteopath.

In a decision dated February 26, 2002, the Office determined that the evidence was insufficient to reopen the case for merit review.

The Board finds that the request for reconsideration was insufficient to require reopening the case 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 May 26, 2002, the only decision over which the Board has jurisdiction on this appeal is the February 26, 2002 decision denying her request for reconsideration.

¹ 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,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 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

The Board notes that, in the February 26, 2002 decision, the basis for the decision is initially stated as finding that the evidence is insufficient to warrant modification. The Office clearly makes a subsequent finding, however, that the evidence is cumulative in nature and is insufficient to warrant reopening the claim for merit review. The issue is stated as whether the evidence is sufficient to warrant review of the February 9, 2001 decision and in view of the stated conclusion that the evidence is cumulative and insufficient to warrant reopening the claim, the Board finds that the February 26, 2002 decision, did not constitute a decision on the merits of the claim.

A review of the January 22, 2002 report from Dr. Rice indicates that its deficiency is not that it is cumulative, since she had not previously submitted a report, but that it is not relevant and pertinent evidence. The Office terminated compensation by decision dated March 21, 1995 and the underlying medical issue is whether appellant had a continuing employment-related condition or disability after that date. She stated only that appellant had a history of an employment injury in 1989, that examination on November 6, 2001 revealed left trapezius spasm and that appellant was unable to work due to her condition. Dr. Rice did not offer an opinion on causal relationship between any disability and appellant's federal employment, or otherwise provide pertinent evidence with respect to the medical issues presented. The Board finds that the evidence submitted did not meet the requirements of section 10.606(b)(2)(iii).

In this case, appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a new and relevant legal argument, or submit relevant and pertinent evidence not previously considered by the Office. Accordingly, the Board finds that the Office properly determined that the request for reconsideration was insufficient to warrant merit review of the claim.

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").

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).

The February 26, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 9, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member