

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. O'CONNELL and U.S. POSTAL SERVICE,
POST OFFICE, Honolulu, HI

*Docket No. 03-446; Submitted on the Record;
Issued April 7, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

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

On June 26, 1997 appellant filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that she sustained left foot and back injuries when she slipped and fell while in the performance of duty. The Office accepted the claim for left foot and low back strains. By letter dated March 24, 1999, the Office notified appellant that it proposed to terminate her compensation. The Office advised appellant that the weight of the medical evidence was represented by Dr. Ramon Bagby, a second opinion orthopedic surgeon.

By decision dated April 26, 1999, the Office terminated compensation for wage-loss and medical benefits. In a decision dated July 24, 2000, an Office hearing representative affirmed the April 26, 1999 decision.

In a letter dated July 2, 2001, appellant requested reconsideration of her claim. By decision dated August 29, 2002, the Office determined that the request for reconsideration and the evidence submitted were insufficient to warrant merit review of the claim.¹

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 her appeal on November 18, 2002, the only decision over which the Board has jurisdiction on this appeal is the August 29, 2002 decision denying her request for reconsideration

¹ The Office explained the delay in issuing a decision by indicating that the request for reconsideration had been overlooked.

² See 20 C.F.R. § 501.3(d).

The Board finds that the case must be remanded to the Office for a merit review.

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 this case, appellant submitted additional medical evidence in support of her claim, including reports from Dr. Bernard Portner, physical medicine and rehabilitation specialist. In a report dated April 26, 2001, Dr. Portner opined that appellant's current low back pain was related to her June 26, 1997 employment injury. In a report dated May 5, 2001, he provided a history of injury and subsequent treatment and opined that appellant's current condition was employment related. In a report dated May 20, 2002, he again opined that appellant's current disabling condition was employment related, stating that his opinion was based on the history and mechanism of injury.

The Office found that the reports from Dr. Portner were "repetitive," but the record does not substantiate this finding. The underlying medical issue is whether appellant had a condition or disability after April 26, 1999 that was causally related to her employment injuries. The only prior medical evidence from Dr. Portner consisted of brief notes dated August 6, 1997 and July 29, 1998 that did not address causal relationship with employment. The reports of Dr. Portner submitted after the July 24, 2000 merit decision clearly are new and relevant medical evidence discussing the issue of causal relationship between appellant's continuing condition and her employment injuries. Appellant has met the requirement of section 10.606(b)(2)(iii) by submitting relevant and pertinent evidence not previously considered. The Office, therefore, should have reopened the case for review of the merits of the claim. The case will be remanded to the Office for an appropriate decision on the merits of the claim.

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 August 29, 2002 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, DC
April 7, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member