

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONSUELO L. ESTRADA and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, San Francisco, CA

*Docket No. 03-87; Submitted on the Record;
Issued February 27, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

The case was before the Board on a prior appeal. In a decision dated April 19, 2001, the Board affirmed decisions of the Office dated February 15, 2000 and December 13, 1999.¹ The Board found that appellant had not established entitlement to compensation on or after August 24, 1992. The Board also determined that the Office had properly denied appellant's request for reconsideration without merit review of the claim. The history of the case is provided in the Board's prior decision and is incorporated herein by reference.

In a letter received by the Office on July 30, 2001, appellant requested reconsideration of her claim. By decision dated August 24, 2001, the Office determined that the reconsideration request was insufficient to warrant further merit review of the claim.

In a letter dated April 16, 2002, appellant again requested reconsideration. Appellant submitted a report dated April 12, 2002 from Dr. Dominic Tse, an orthopedic surgeon.

By decision dated July 16, 2002, the Office denied the request for reconsideration as the evidence submitted was insufficient to warrant merit review of the claim.

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

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 October 10, 2002, the only decision over which the

¹ Docket No. 01-230.

² See 20 C.F.R. § 501.3(d).

Board has jurisdiction on this appeal is the July 16, 2002 decision denying her request for reconsideration.

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 provide 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 the April 16, 2002 request for reconsideration does not provide a new and relevant legal argument. The new evidence submitted consists of the April 12, 2002 report from Dr. Tse; he stated that appellant's medical limitations pertained primarily to the outpatient pharmacy technician position. Dr. Tse stated that he believed the job activities in the offered job as an inpatient pharmacy technician were "more physically demanding than the outpatient pharmacy technician. If she was reassigned to inpatient pharmacy service, it would be more likely than not that it would exacerbate her injury." As the Board noted in its prior decision, the evidence indicated that the offered position was within Dr. Tse's medical limitations as provided in an August 14, 1992 form report. The record indicated that appellant's medical restrictions as of August 24, 1992 were represented by the August 14, 1992 form report. In the April 12, 2002 report, Dr. Tse speculated that the offered position may have aggravated her injury if she had accepted the position, but that is not pertinent to the underlying medical issues. Dr. Tse did not offer an opinion as to whether there was a change in the employment-related condition on or after August 24, 1992 that resulted in disability for the offered position. The Board finds that the evidence submitted did not provide new and relevant evidence to the issues in the case. Accordingly, the Board finds that the Office properly determined that the reconsideration request was insufficient to reopen the case for merit review.

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 July 16, 2002 is affirmed.

Dated, Washington, DC
February 27, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member