

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYRIS ORTEGA and DEPARTMENT OF THE NAVY,
CHILD DEVELOPMENT CENTER, Sabana Seca, PR

*Docket No. 02-2382; Submitted on the Record;
Issued June 24, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

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 October 28, 2000, the Board found that appellant's January 20, 1999 request for reconsideration was sufficient to warrant a merit review of the claim.¹ The Board set aside an Office decision dated July 26, 1999 and remanded the case for further development. The history of the case as provided in the Board's decision is incorporated herein by reference.

On remand of the case, the Office further developed the record on the issue of whether appellant had established a compensable work factor as contributing to an emotional condition. By decision dated March 28, 2001, the Office denied modification of a May 20, 1997 decision denying the claim. The Office found that appellant had not substantiated a compensable work factor.

In a letter dated February 18, 2002, appellant requested reconsideration of her claim. Appellant reiterated her allegation that she had been subject to harassment, discrimination and retaliation by her supervisor. She submitted a December 29, 1997 report from Dr. Guillermo Hoyos, a psychiatrist, that had previously been submitted to the Office in April 1998 as well as treatment notes from Dr. Hoyos.

By decision dated June 20, 2002, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.²

¹ Docket No. 00-494 (issued December 28, 2000).

² The decision was issued May 23, 2002; the Office learned of a change in appellant's address and the decision was reissued on June 20, 2002.

The Board finds that the Office properly denied appellant's request for reconsideration without 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.³ As appellant filed her appeal on September 16, 2002, the only decision over which the Board has jurisdiction on this appeal is the June 20, 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,⁴ 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) constituting relevant and pertinent evidence not previously considered by the Office.⁵ 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.⁶

Appellant's request for reconsideration reiterates her allegation that she was subject to harassment and discrimination. In order to require the Office to reopen the case for merit review, however, she must meet one of the requirements listed in section 10.606(b)(2). Appellant did not show that the Office erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument. Moreover, appellant did not submit any new evidence to support her allegation of harassment and discrimination. The only new evidence submitted consists of treatment notes from Dr. Hoyos. These notes are not considered relevant because the initial issue in an emotional condition claim is whether a compensable work factor has been substantiated; once a work factor is substantiated, and then the medical evidence is reviewed on the issue of causal relationship between the work factor and a diagnosed medical condition.⁷

The Board finds that appellant did not meet any of the requirements of section 10.606(b)(2). Accordingly, she is not entitled to a merit review of her claim.

³ See 20 C.F.R. § 501.3(d).

⁴ 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").

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ 20 C.F.R. § 10.608(b); *see also* *Norman W. Hanson*, 45 ECAB 430 (1994).

⁷ *See Margaret S. Krzycki*, 43 ECAB 496 (1992). The Board notes that the treatment notes do not provide an opinion on causal relationship with employment.

The decision of the Office of Workers' Compensation Programs dated June 20, 2002 is affirmed.

Dated, Washington, DC
June 24, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member