

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL A. PULLEN and U.S. POSTAL SERVICE,
POST OFFICE, Detroit, MI

*Docket No. 03-996; Submitted on the Record;
Issued June 17, 2003*

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 refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

This is the second appeal in this case. The Board issued a decision¹ on November 5, 2001 in which it affirmed the November 17, 1998 and September 2, 1999 decisions of the Office on the grounds that appellant had not shown she had disability after May 10, 1996 due to her December 14, 1992 employment injury.² By decision dated November 17, 1998, the Office had determined that appellant had no disability after May 10, 1996 due to her December 14, 1992 employment injury. The Office based its determination on the opinion of Dr. Norman L. Pollak, a Board-certified orthopedic surgeon, who served as an impartial medical specialist. By decision dated and finalized September 2, 1999, an Office hearing representative affirmed the Office's November 17, 1998 decision.³

By letter dated November 4, 2002, appellant indicated that she was requesting reconsideration of her claim and asked that the Office "extend the time" for her reconsideration request. She indicated that she had delayed in filing her reconsideration request because she

¹ Docket No. 00-312 (issued November 5, 2001).

² On December 14, 1992 appellant, then a 50-year-old mail carrier, sustained a lumbosacral, left heel and gluteal contusions; subluxations at L4-5, T3, T8 and T9; and a herniated disc at L4-5 when she bumped into a mail case at work. She worked in light-duty positions and received compensation for periods of disability.

³ By decision dated May 10, 1996, the Office had terminated appellant's compensation effective May 10, 1996 on the grounds that she had no disability after that date to her December 14, 1992 employment injury. By decision dated and finalized February 27, 1997, an Office hearing representative affirmed the Office's termination of appellant's compensation effective May 10, 1996, but determined that medical evidence submitted after May 10, 1996 created a new conflict in the medical evidence regarding her continuing employment-related disability. The representative remanded the case to the Office for referral to an impartial medical specialist.

suffered from major depression and panic disorder. Appellant submitted an October 30, 2002 report in which Dr. Ron Melvin, an attending osteopath, indicated that she suffered from major depression and panic disorder which prevented her from being “able to file for disability.” By decision dated November 29, 2002, the Office denied appellant’s request for merit review.

The Board finds that the Office properly refused to reopen appellant’s case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

The only decision before the Board on this appeal is the Office’s November 29, 2002 decision denying appellant’s request for a review on the merits of its last merit decision. Because more than one year has elapsed between the issuance of the Office’s last merit decision and March 4, 2003, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the decision.⁴

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act,⁵ the Office’s regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁶ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁷ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁸

In support of her reconsideration request, appellant argued that her emotional condition caused a delay in the filing of her reconsideration request. She submitted an October 30, 2002 report in which Dr. Melvin, an attending osteopath, indicated that she suffered from major depression and panic disorder which prevented her from handling her compensation claim in a timely manner. However, this argument and evidence is not relevant to the main issue of the present case which is medical in nature, *i.e.*, whether appellant has shown that she had disability after May 10, 1996 due to her December 14, 1992 employment injury.⁹ Dr. Melvin’s report does not relate to the orthopedic condition which has been accepted by the Office. The Board has

⁴ See 20 C.F.R. § 501.3(d)(2).

⁵ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.” 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. §§ 10.606(b)(2).

⁷ 20 C.F.R. § 10.607(a).

⁸ 20 C.F.R. § 10.608(b).

⁹ The Office accepted that appellant sustained a lumbosacral, left heel and gluteal contusions; subluxations at L4-5, T3, T8 and T9; and a herniated disc at L4-5

held that the submission of evidence and argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰

In the present case, appellant has not established that the Office improperly refused to reopen her claim for a review on the merits of its November 5, 2001 decision under section 8128(a) of the Act, because she did not to show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence not previously considered by the Office.

The decision of the Office of Workers' Compensation Programs dated November 29, 2002 is affirmed.

Dated, Washington, DC
June 17, 2003

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁰ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979). Appellant's argument is not relevant for the further reason that she actually filed a timely reconsideration request.