

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of ANTOINETTE D. HUNDLEY and DEPARTMENT OF VETERANS  
AFFAIRS, OFFICE OF RESOLUTION MANAGEMENT, Washington, DC

*Docket No. 02-2260; Submitted on the Record;  
Issued March 5, 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 determined that appellant's requests for reconsideration were insufficient to warrant further review of the claim.

On August 18, 1999 appellant filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she sustained a back injury in the performance of duty on July 23, 1999.<sup>1</sup> By decision dated October 12, 1999, the Office denied the claim, finding that appellant had not established an employment incident as alleged on July 23, 1999. In a decision dated March 3, 2000, an Office hearing representative affirmed the October 12, 1999 decision. By decision dated September 18, 2000, the Office reviewed the claim on its merits and denied modification.

In decisions dated November 28, 2000, September 20, 2001 and August 16, 2002, the Office determined that the evidence submitted was insufficient to warrant further 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.<sup>2</sup> As appellant filed her appeal on September 7, 2002, the only decisions over which the Board has jurisdiction on this appeal are the September 20, 2001 and August 16, 2002 decisions denying her request for reconsideration.

The Board finds that the Office properly determined that the evidence was not sufficient to warrant reopening the claim for review of the merits.

---

<sup>1</sup> Appellant had submitted a claim for occupational disease or illness (Form CA-2) dated August 16, 1999; she advised the Office to disregard this claim form in a letter dated August 18, 1999.

<sup>2</sup> 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,<sup>3</sup> 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 new evidence not previously considered by the Office.<sup>4</sup> 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.<sup>5</sup>

In a letter dated March 15, 2001, appellant requested reconsideration of her claim. She requested that her claim be treated as an occupational disease claim, stating that her injury was the result of regular lifting during her temporary appointment from April to July 1999. The pending claim, however, was for a traumatic injury on July 23, 1999. In order to require the Office to reopen this claim for merit review, appellant must meet one of the requirements of section 10.606(b)(2) with respect to the traumatic injury claim. Appellant submitted a report dated February 22, 2001 from Dr. Maciej Poltorak, a neurologist, diagnosing L5-S1 radiculopathy. Dr. Poltorak opined that the injury was the result of frequent lifting from April to July 1999. While such evidence may be relevant to a new claim for occupational disease or illness, it is not relevant to the current traumatic injury claim. The Office found that appellant had not established an employment incident as alleged on July 23, 1999 and therefore the underlying initial issue is a factual issue. The report of Dr. Poltorak is not relevant to the occurrence of an employment incident on July 23, 1999. Appellant also submitted witness statements dated September 27, 1999, but these statements had previously been submitted and do not constitute new evidence.

The Board finds that appellant's March 15, 2001 request for reconsideration did not provide new and relevant evidence, or meet any of the requirements of section 10.606(b)(2). By letter dated December 31, 2001, appellant again requested reconsideration of her claim. She did not provide any new and relevant evidence to the issues presented. Accordingly, the Board finds that appellant's requests for reconsideration were not sufficient to require the Office to reopen the case for review of the merits of the claim.

---

<sup>3</sup> 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 [her] own motion or on application").

<sup>4</sup> 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> 20 C.F.R. § 10.608(b); *see also* Norman W. Hanson, 45 ECAB 430 (1994).

The decisions of the Office of Workers' Compensation Programs dated August 16, 2002 and September 20, 2001 are affirmed.

Dated, Washington, DC  
March 5, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member