

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ORA SIMMONS and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Jacksonville, FL

*Docket No. 02-2291; Submitted on the Record;
Issued March 17, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

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 had been before the Board on two prior appeals. In a decision dated March 25, 1996, the Board affirmed an October 14, 1993 Office decision, finding that appellant had not established a right wrist injury causally related to her federal employment.¹ By decision dated May 16, 2001, the Board remanded the case for a merit decision with respect to appellant's claim that her accepted left wrist injuries caused disability from June 1991 through December 1996.² The history of the case is contained in the Board's prior decisions and is incorporated herein by reference.

In a decision dated June 11, 2001, the Office reviewed the case on its merits and denied modification of a March 13, 1997 Office decision. The Office found that appellant had not established an employment-related disability on or after June 1, 1991.

By letter dated May 18, 2002, appellant requested reconsideration of the claim and submitted accompanying evidence. In a decision dated July 19, 2002, the Office determined that the request for reconsideration and the evidence submitted were not sufficient to require reopening the claim for merit review.

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

¹ Docket No. 94-974 (issued March 25, 1996).

² Docket No. 00-632 (issued May 16, 2001). The accepted conditions are a left wrist sprain and consequential left carpal tunnel syndrome.

decision.³ As appellant filed her appeal on September 9, 2002, the only decision over which the Board has jurisdiction on this appeal is the July 19, 2002 decision denying her request for reconsideration.

The Board finds that the Office properly denied the request for reconsideration in this case.

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 regulation 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.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

In the May 18, 2002 reconsideration request, appellant noted the history of the claim and indicated that she still had left wrist pain. She did not, however, show that the Office erroneously applied or interpreted a point of law, or advance a new and relevant legal argument. With respect to the evidence submitted, appellant provided a claim for compensation (Form CA-7) dated May 18, 2002 that is not relevant to the medical issues in the case. The remainder of the evidence submitted with the May 18, 2002 reconsideration request is not considered new evidence, as it was previously submitted and considered by the Office. Accordingly, the Board finds that appellant did not meet any of the requirements of section 10.606(b)(2) and the Office properly declined to review the case on its merits.

The Board notes that the May 18, 2002 Form CA-7 indicates that appellant is claiming entitlement to a schedule award. On return of the case record, the Office should issue an appropriate decision on this issue.

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).

The decision of the Office of Workers' Compensation Programs dated July 19, 2002 is affirmed.

Dated, Washington, DC
March 17, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member