

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of GLORIA J. ANDREWS and U.S. POSTAL SERVICE,  
POST OFFICE, Atlanta, GA

*Docket No. 03-1993; Submitted on the Record;  
Issued October 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 refused to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128 (a).

On September 18, 1997 appellant, a then a 50-year-old city carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained a stroke which she believed occurred in the course of her employment. She became aware of her illness on April 2, 1996 and, on August 11, 1997, realized that it was caused or aggravated by her employment. Appellant stopped work on August 11, 1997.

In a January 30, 1998 decision, the Office denied appellant's claim for compensation on the grounds that the medical evidence was insufficient to establish that her stroke was caused by her work duties. By letter dated January 24, 1999, appellant requested reconsideration and enclosed additional medical evidence. In a decision dated April 29, 1999, the Office vacated the previous decision and denied appellant's claim based on the fact that she failed to establish the factual basis of her claim and fact of injury was not established.

By letters dated April 25, 2000, appellant requested reconsideration and included additional evidence.<sup>1</sup> In an August 9, 2000 decision, the Office found that she had established two compensable employment factors; however, the medical evidence was insufficient to establish causal relationship. By letter dated August 3, 2001, appellant requested reconsideration and enclosed additional evidence, and in a decision dated November 20, 2001, the Office denied modification of its August 9, 2000 decision. She again requested reconsideration on November 15, 2002 and submitted additional evidence. By decision dated July 24, 2003, the Office found that the evidence submitted, in support of appellant's request for reconsideration, was insufficient to warrant review of its prior decision.

---

<sup>1</sup> By letter dated May 26, 1999, appellant requested a hearing and subsequently changed her request to one for reconsideration.

The only Office decision before the Board, on this appeal, is the Office's July 24, 2003 decision finding that appellant's application for review was insufficient to warrant further merit review of its prior decision. Since more than one year has elapsed between the date of the Office's most recent merit decision, on November 20, 2001, and the filing of appellant's appeal on August 12, 2003, the Board lacks jurisdiction to review the merits of appellant's claim.<sup>2</sup>

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

Section 8128(a) of the Federal Employees' Compensation Act<sup>3</sup> vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.<sup>4</sup> Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>5</sup> The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>6</sup> Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.<sup>7</sup>

With her November 15, 2002 request for reconsideration, appellant submitted a report of an April 5, 2000 computerized tomography of her head, in which Dr. Robert E. Chandlee, a Board-certified diagnostic radiologist, noted that appellant had an "old left inferior cerebellum infarct unchanged from a year ago." He indicated that appellant had a small vessel ischemic disease or a chronic neurodegenerative process and opined that no acute abnormalities were identified. The Board finds that this report does not constitute relevant medical evidence because

---

<sup>2</sup> 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 5 U.S.C. § 8128(a) ("The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

<sup>5</sup> 20 C.F.R. § 10.608(a) (1999).

<sup>6</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>7</sup> 20 C.F.R. § 10.608(b).

appellant's claim was denied on the basis that the evidence did not establish that her condition was caused by employment factors.<sup>8</sup> This report contains no discussion of the causal relationship of the carpal tunnel syndrome findings to appellant's accepted compensable factors of employment.

Appellant failed to show that the Office erred in interpreting a point of law or advanced any relevant legal argument not previously considered by the Office. Furthermore, she did not submit relevant and pertinent new medical evidence. As appellant failed to meet any of the three requirements for reopening her claim for merit review, the Office properly denied her reconsideration request.<sup>9</sup>

The July 24, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
October 24, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

---

<sup>8</sup> The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case. *Robert P. Mitchell*, 52 ECAB 116 (2000).

<sup>9</sup> *James E. Norris*, 52 ECAB 93 (2000).