

found that appellant's March 13, 2005 letter requesting reconsideration was made more than one year after the last merit decision which was issued by the Board on October 23, 1998 and that appellant failed to present any argument or evidence raising a substantial question as to the correctness of its October 1, 1998 decision.² In the October 1, 1998 decision, the Board found that appellant was not totally disabled beginning June 25, 1993 due to her accepted employment-related bilateral carpal tunnel syndrome and that she did not sustain an emotional condition while in the performance of duty. The facts and the circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference.³

Following the issuance of the Board's January 13, 2006 decision, appellant filed a petition for reconsideration, which the Board declined to address because she did not file it within the requisite time limitation.

In a July 14, 2006 memorandum to the file, the Office noted the Board's refusal to reconsider appellant's case. It decided to assign her case to a senior claims examiner for reconsideration.

By decision dated July 21, 2006, the Office denied appellant's February 6, 2006 request for reconsideration⁴ as it neither raised substantive legal questions nor included pertinent new and relevant evidence and, thus, it was insufficient to warrant further merit review of its prior decisions.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 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

² Docket No. 97-1656 (issued October 23, 1998).

³ On December 12, 1984 appellant, then a 28-year-old clerk, filed an occupational disease claim. The Office accepted appellant's claim for bilateral carpal tunnel syndrome and authorized bilateral carpal tunnel release which was performed on March 27, 1985. By decision dated January 19, 1989, the Office granted appellant a schedule award for a 12 percent impairment of the right upper extremity and a 10 percent impairment of the left upper extremity. Thereafter, she accepted the employing establishment's job offer for a limited-duty distribution window clerk position and returned to work on May 18, 1992.

⁴ The Board notes that the Office considered appellant's February 6, 2006 petition for reconsideration as a request for reconsideration.

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)(1)-(2).

⁷ *Id.* at § 10.607(a).

above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS

By letter dated February 6, 2006, appellant disagreed with the finding that she was not totally disabled beginning June 25, 1993 due to her accepted employment-related bilateral carpal tunnel syndrome and that she did not sustain an emotional condition while in the performance of duty. This was decided on the merits by the Board's decision dated October 23, 1998.⁸ The relevant underlying issues are whether appellant sustained a recurrence of disability beginning June 25, 1993 causally related to her accepted employment injury and whether she sustained an emotional condition while in the performance of duty.

Appellant did not submit any relevant or pertinent new evidence not previously considered by the Office in support of her request for reconsideration. Further, she did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office.⁹ As appellant did not meet any of the necessary regulatory requirements, the Board finds that she was not entitled to a merit review.¹⁰

CONCLUSION

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

⁸ See *supra* note 2.

⁹ Following the issuance of this Board decision, appellant may submit any pertinent new relevant evidence or argument to the Office along with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. § 10.606.

¹⁰ See *James E. Norris*, 52 ECAB 93 (2000).

ORDER

IT IS HEREBY ORDERED THAT the July 21, 2006 decision of Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board