

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAISY MARTINEZ and U.S. POSTAL SERVICE,
POST OFFICE, San Juan, PR

*Docket No. 01-1980; Submitted on the Record;
Issued April 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The only decision before the Board on this appeal is the Office's May 11, 2001 decision denying appellant's application for a reconsideration of the Office's April 5, 2000 merit decision.¹ Because more than one year has elapsed between the issuance of the Office's April 5, 2000 merit decision and August 11, 2001, the postmarked date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the April 5, 2000 decision.²

The Federal Register dated November 25, 1998 advised that, effective January 4, 1999, certain changes to 20 C.F.R. Parts 1 to 399 would be implemented. The revised Office procedures pertaining to the requirements for obtaining a review of a case on its merits under 5 U.S.C. § 8128(a), state as follows:

“(b) The application for reconsideration, including all supporting documents, must:

(1) Be submitted in writing;

¹ By this decision, the Office denied modification of a February 4, 2000 decision that denied a claim for an August 7, 1993 recurrence of disability. This claim was No. A02-0519028 which had been accepted for lower back strain only.

² See 20 C.F.R. § 501.3(d)(2).

- (2) Set forth arguments and contain evidence that either:
- (i) Shows that OWCP erroneously applied or interpreted a specific point of law;
 - (ii) Advances a relevant legal argument not previously considered by OWCP; or
 - (iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”³

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.⁴ The Board has found that the imposition of the one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under section 8128(a) of the Act.⁵ When a claimant fails to meet one of the standards contained in section 10.606(b), the Office will deny the application for reconsideration without reopening the case for review on the merits.⁶

In support of her April 1, 2001 reconsideration request, appellant submitted multiple medical and factual documents dating from August 10, 1999 to March 28, 2001 and addressing appellant’s depression, bilateral ulnar nerve problems, carpal tunnel syndrome, bilateral C6-7 cervical radiculopathy, cervical spine problems, lower extremity pain and numbness.

As appellant submitted new medical reports, the Office was therefore required to apply the third standard, whether appellant submitted relevant and pertinent new evidence not previously considered by the Office. The Office then conducted a limited review of the evidence and found, and the Board now concurs, that the recent medical and factual evidence, dating from 1999 through 2001 and addressing multiple conditions other than the accepted employment-related condition, is not relevant to the issue of whether appellant sustained a 1993 recurrence of disability causally related to her September 27, 1983 accepted lower back strain. None of the evidence submitted addressed appellant’s accepted condition, lower back strain, for which she had claimed a recurrence of disability commencing August 7, 1993.

The Office found, therefore, and the Board now agrees, that this evidence is not relevant to the issue of the Office’s February 4, 2000 decision or to its April 5, 2000 affirmance, which was whether appellant sustained a recurrence of disability commencing August 7, 1993, causally related to her accepted September 27, 1983 low back soft tissue muscular strain injury. Consequently, the factual and medical reports submitted in support of appellant’s request for

³ 20 C.F.R. § 10.606(b)(1), (2).

⁴ 20 C.F.R. § 10.607(a).

⁵ *Diane Matchem*, 48 ECAB 532 (1997); *Jeanette Butler*, 47 ECAB 128 (1995); *Mohamed Yunis*, 46 ECAB 827 (1995); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁶ 20 C.F.R. § 10.608(b).

reconsideration of the April 5, 2000 Office decision are not relevant, and do not constitute a basis for reopening a claim for further merit review. The Office properly denied appellant's application for reopening her case for a further review on its merits.

In the present case, appellant has not established that the Office abused its discretion by denying her request for review of its April 5, 2000 decision on its merits.

Accordingly, the decision of the Office of Workers' Compensation Programs dated May 11, 2001 is hereby affirmed.⁷

Dated, Washington, DC
April 4, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

⁷ On appeal appellant submitted a large amount of information including medical reports and claim forms. The Board notes that, as this evidence was not before the Office at the time of its most recent decision, it is not now before the Board on this appeal. *See* 20 C.F.R. § 501.2(c).