

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBRA DIXON and U.S. POSTAL SERVICE,
HAYS PARK POST OFFICE, Spokane, WA

*Docket No. 00-2601; Submitted on the Record;
Issued July 3, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ Because more than one year has elapsed between the issuance of the Office's January 11, 1999 merit decision and June 12, 2000, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the January 11, 1999 decision. Therefore, the only decision before the Board is the Office's June 5, 2000 nonmerit decision denying appellant's application for a review of its January 11, 1999 decision.

On October 11, 1996 appellant, then a 30-year-old letter carrier, filed a notice of traumatic injury alleging that on October 10, 1996, her supervisor "grabbed her left arm and squeezed it in anger." Appellant claimed that the incident caused her great stress, lack of sleep and inability to work. Appellant stopped work on October 12, 1996 and returned to work on October 26, 1996. By decision dated March 7, 1997, the Office accepted appellant's claim for "adjustment disorder, unspecified-resolved no later than October 12, 1996." However, on March 13, 1997 the Office determined that appellant was not entitled to continuation of pay from October 13 through 25, 1996, based on a February 24, 1997 second opinion report indicating that appellant's condition was resolved by no later than October 12, 1996.

Appellant requested an oral hearing, which was held on October 29, 1998. By decision dated January 11, 1999, the hearing representative affirmed the Office's March 13, 1997 decision, finding that the weight of the medical evidence revealed that appellant had recovered from the effects of her employment injury by no later than October 12, 1996.

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

By letter dated January 5, 2000, appellant requested reconsideration.

By decision dated May 5, 2000, the Office denied appellant's request for review.

The Board finds that the Office acted within its discretion in refusing to reopen appellant's case for further consideration of the merits of her claim.

Section 8128(a) of the Federal Employees' Compensation Act, which pertains to review, vests the Office with the discretionary authority to determine whether it will review a claim following issuance of a final Office decision.² The Office through regulations, has placed limitations on the exercise of that discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,³ 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) submit relevant and pertinent new evidence not previously considered by the Office.⁴ 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.⁵ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁶

In support of her January 5, 2000 request for reconsideration, appellant submitted a lengthy personal statement describing all of her areas of disagreement with the Office, several colleagues' personal statements already contained in the record, copies of Office decisions, additional personal statements, an assault and threat specialty report, work release forms and medical information from the internet about adjustment disorder and personality disorder.

The relevant issue in appellant's case was medical in nature. Appellant's claim for continuation of pay from October 13 through 25, 1996 was denied because the weight of the medical evidence of record revealed that appellant had recovered from the effects of her employment injury by no later than October 12, 1996. As such, appellant had the burden of providing additional medical evidence showing that she continued to have residual disability due to her employment injury after October 12, 1996.

In support of her request for reconsideration, the only evidence appellant submitted was a medical report already contained in the record from Dr. Edward Mills, a Board-certified orthopedic surgeon, dated February 24, 1997 and medical information obtained from the internet

² 20 C.F.R. § 10.606(a); *see generally* 5 U.S.C. § 8128.

³ 5 U.S.C. §§ 8101-8193.

⁴ 20 C.F.R. §§ 10.606.

⁵ 20 C.F.R. § 10.607.

⁶ 20 C.F.R. § 10.608.

about borderline personality disorder, insomnia and adjustment disorder.⁷ Appellant did not, however, submit any new and relevant medical opinion evidence, stating that she continued to suffer from effects of her workplace injury after October 12, 1996. In addition, the legal arguments that appellant advanced in her personal statement had been previously considered by the Office and by the hearing representative at the time of the oral hearing. The factual evidence submitted is irrelevant to the medical issue and insufficient to warrant merit review.

Appellant has not established that the Office abused its discretion in its June 5, 2000 decision, by denying her request for a review on the merits because she did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office.

The June 5, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 3, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁷ The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value as they are of general application and are not determinative of whether the specific condition claimed was causally related to the particular factors involved. *William C. Bush*, 40 ECAB 1064 (1989).