

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD E. SMITH and DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT AGENCY, Detroit, MI

*Docket No. 00-1934; Submitted on the Record;
Issued February 21, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration without merit review of the claim.

The case has been before the Board on prior appeals. In a decision dated February 7, 1997, the Board reversed an Office decision dated August 24, 1994, finding that the Office failed to meet its burden of proof in determining appellant's wage-earning capacity based on a selected position.¹ In a decision dated May 12, 1999, the Board affirmed a June 4, 1997 Office decision, finding that appellant's wage-earning capacity was represented by actual earnings as of October 1986.² The history of the case is contained in the Board's prior decisions and is incorporated herein by reference.

In a letter dated December 13, 1999, appellant requested reconsideration of his claim. By decision dated February 15, 2000, the Office determined that the request for reconsideration was insufficient to warrant merit review of the claim.

The Board finds that the Office properly denied appellant's request for reconsideration without merit review of the claim.

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 decision.³ As appellant filed his appeal on May 8, 2000, the only Office decision over which the Board has jurisdiction on this appeal is the February 15, 2000 decision denying his request for reconsideration.

¹ Docket No. 97-281.

² Docket No. 97-2051.

³ See 20 C.F.R. § 501.3(d).

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 regulations 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) submitting relevant and pertinent 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 appellant's December 13, 1999 letter, he indicated his disagreement with the Office's decision. He briefly stated that the Office had failed to provide a written notice of its intent to reduce compensation. The Board finds that this does not represent a relevant legal argument in this case. Appellant had received notice of the Office's intent to reduce compensation based on wage-earning capacity; his compensation had been reduced by the prior Office decisions, including an August 29, 1994 decision. The June 4, 1997 Office decision did not further reduce appellant's compensation; it changed the basis of the wage-earning capacity determination, but kept the compensation payments at the same level he had been receiving since 1994. Appellant had an opportunity to fully discuss the issues presented by exercising his appeal rights following the June 4, 1997 decision, and he did so before the Board. The argument as to lack of adequate notice has no reasonable color of validity, and therefore the Office is not required to reopen the case for merit review.⁷

The Board finds that appellant did not submit any new and relevant evidence with respect to the wage-earning capacity determination, nor did he meet any of the requirements of section 10.606(b)(2). Accordingly, the Office properly denied his request for reconsideration without merit review of the claim.

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).

⁷ *See Norman W. Hanson*, 40 ECAB 1160 (1989).

The decision of the Office of Workers' Compensation Programs dated February 15, 2000 is affirmed.

Dated, Washington, DC
February 21, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member