

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSE R. PADILLA and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, Calif.

*Docket No. 95-3119; Submitted on the Record;
Issued March 5, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on June 15, 1995.

The Board has duly reviewed the case on appeal and finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits on June 15, 1995.

This case previously has been on appeal to the Board on three occasions. In a decision dated September 17, 1987, the Board found that appellant's disability causally related to her accepted employment injury ceased on May 11, 1986.¹ By decision dated June 28, 1991, the Board found that the Office abused its discretion by finding appellant's request for reconsideration untimely and remanded for an appropriate decision.² In an order dated October 6, 1994, the Board remanded the case for reconstruction of the case record and an appropriate decision.³ The facts and circumstances as found in the Board's prior decisions are adopted herein by reference.⁴

Following the Board's July 28, 1991 decision, the Office denied modification of its prior decision on August 21, 1991. Appellant requested reconsideration on August 18, 1992 and the Office again denied modification on October 2, 1992. Appellant requested reconsideration on September 29, 1993 and by decision dated December 23, 1993 the Office denied appellant's

¹ Docket No. 87-444.

² Docket No. 91-473.

³ Docket No. 94-1517.

⁴ Appellant's November 25, 1975 employment injury resulted in the accepted conditions of contusion and sprain left thoracic spine, strain left hip and strain left knee.

request. Appellant requested review by the Board and by order dated October 6, 1994 the Board remanded the case for reconstruction and an appropriate decision. By decision dated July 15, 1995, the Office denied appellant's request for reconsideration finding that she had not submitted relevant new evidence.

Section 10.138(b)(1) of the Code of Federal 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 point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁵ Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁶

In support of her September 29, 1993 request for reconsideration, appellant submitted several reports from Dr. Neil Thrasher, a Board-certified orthopedic surgeon. In reports dated July 30, 1993, Dr. Thrasher stated that appellant had low back and left sciatic pain secondary to injury in 1975. He diagnosed left lumbar intervertebral disc herniation at L4-5. On August 26, 1993 Dr. Thrasher diagnosed left fourth and fifth lumbar interspace disc displacement with L5 nerve root compression syndrome.

Appellant submitted a report dated December 11, 1992 from Dr. Russell B. Sadler, a radiologist, diagnosing developmental variation at the lumbosacral junction and advanced degenerative spondylarthrosis at the lumbosacral junction.

These reports are not sufficient to require the Office to reopen appellant's claim for review of the merits as they are not relevant to the issue on which the Office denied appellant's claim. The Office found that appellant was not entitled to continuing compensation benefits as the weight of the medical evidence established that she had no medical residuals or disability causally related to her accepted employment injury. The reports from Drs. Thrasher and Sadler do not address the causal relationship between appellant's diagnosed conditions or disability and her accepted employment injuries. Without relevant new evidence addressing the issue of causal relationship, the Office is not required to reopen appellant's claim for review of the merits.

Appellant submitted documents relating to her epidural steroid injection. As these documents were not signed by a physician, they have no probative value in establishing that appellant's current condition or disability is causally related to her accepted employment injuries.⁷

⁵ 20 C.F.R. § 10.138(b)(1).

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ *Merton J. Sills*, 39 ECAB 572 (1988).

The decision of the Office of Workers' Compensation Programs dated June 15, 1995 is hereby affirmed.

Dated, Washington, D.C.
March 5, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member