

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of ALBERT R. VALVERDE and U.S. POSTAL SERVICE,
POST OFFICE, Newark, NJ

*Docket No. 99-1612; Submitted on the Record;
Issued October 5, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

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 January 6, 1999.

The Board has duly reviewed the case on appeal and finds that the Office abused its discretion.

Appellant, a letter carrier, filed a claim on June 30, 1997 alleging that on June 16, 1997 he became aware that he had developed a left knee and low back condition causally related to his work-related right knee injury. The Office denied his claim on November 4, 1997 finding that he failed to submit sufficient medical evidence to establish a causal relationship between his federal employment and his diagnosed conditions. Appellant through his attorney requested reconsideration and submitted additional medical evidence. By decision dated January 6, 1999, the Office declined to reopen appellant's claim for consideration of the merits of his claim.

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).¹ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.² Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the

¹ 20 C.F.R. § 10.608(a).

² 20 C.F.R. § 10.606(b)(1) and (2).

Office will deny the application for reconsideration without reopening the case for a review on the merits.³

In this case, appellant submitted relevant and pertinent new evidence not previously considered by the Office. Appellant submitted a report dated October 20, 1997 from Dr. David M. Myers, a Board-certified orthopedic surgeon, who noted appellant's original right knee injury⁴ and stated that following this injury appellant has been "favoring his right knee and he has developed problems with his left knee as well as his lumbar spine." He reported findings regarding appellant's lumbar spine and left knee. Dr. Myers stated, "[Appellant] does continue to have residual symptomatology into his left knee and his lower back which are developing problems secondary to this original right knee problem." He concluded, "It is my opinion that the initial right knee injury was the incident that contributed to his existing condition based on favoring the right knee leading to favoring the left knee and uneven ambulatory gait leading to chronic disease of the lumbar spine as identified."

This report is relevant to this issue for which the Office denied appellant's claim, *i.e.*, the causal relationship between his current condition and his federal employment, and further expounds upon Dr. Myers' June 10, 1997 report reviewed by the Office prior to its November 4, 1997 decision. In this report, Dr. Myers stated that appellant had developed secondary sequential changes in his lumbar spine and left knee from his right knee injury and stated that he had progressive deterioration of his lumbar spine and left knee as a result of the repetitive limp. As noted above, the October 20, 1997 report offers further physical findings and medical rationale in support of appellant's alleged consequential injury.

As appellant submitted relevant new evidence not previously considered by the Office, the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits of his claim for consequential injuries to his back and left knee as a result of his accepted right knee injury. On remand the Office should review appellant's claim on the merits and undertake any necessary development of the medical evidence.

³ 20 C.F.R. § 10.608(b).

⁴ Although the current claim is not combined with appellant's 1977 employment injury, the employing establishment submitted evidence that an injury occurred in 1977 and was approved by the Office.

The January 6, 1999 decision of the Office of Workers' Compensation Programs is hereby reversed and remanded for an appropriate decision.

Dated, Washington, DC
October 5, 2000

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member