

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GERALDINE B. LLEWELLYN and U.S. POSTAL SERVICE,  
McDOWELL STATION, Phoenix, AZ

*Docket No. 00-1277; Submitted on the Record;  
Issued March 19, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained an injury in the performance of duty on or after June 8, 1995 causally related to factors of her employment; and (2) whether the Office of Workers' Compensation Programs acted within its discretion in denying appellant's request for a merit review.

With respect to the first issue, the Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the Office's hearing representative, dated and finalized March 9, 1999, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

The Board further finds that the Office acted within its discretion in denying appellant's request for a merit review.

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by submitting an application which: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent evidence not previously considered by the Office.<sup>1</sup> When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>2</sup>

By letter dated May 20, 1999, submitted through her attorney, appellant requested a merit review. She stated that the Office hearing representative, in her March 9, 1999 decision, had

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<sup>1</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>2</sup> 20 C.F.R. § 10.608(b) (1999).

given an incorrect date for a magnetic resonance imaging (MRI) scan.<sup>3</sup> She stated that the medical evidence previously submitted was sufficient to establish that she sustained an injury causally related to her employment. She submitted documents previously of record.

By decision dated August 20, 1999, the Office denied appellant's request for further merit review on the grounds that the evidence submitted was cumulative and not sufficient to warrant further merit review.

In support of her May 20, 1999 request for reconsideration, appellant submitted evidence previously of record. As this evidence was previously of record, it does not constitute relevant and pertinent evidence not previously considered by the Office.

Appellant argued that the medical evidence previously submitted was sufficient to establish her claim. However, the Board has held that lay individuals, such as appellant, are not competent to render a medical opinion.<sup>4</sup> Therefore, appellant's opinion regarding the medical evidence does not constitute relevant and pertinent evidence not previously considered by the Office.

Appellant also stated that the Office hearing representative had given an incorrect date for an MRI in her March 9, 1999 decision. However, the Office hearing representative's March 9, 1999 decision was not based upon the date of the MRI. The fact that the Office hearing representative indicated an incorrect date for the MRI does not show that the Office erroneously applied or interpreted a specific point of law, does not advance a relevant legal argument not previously considered by the Office and does not constitute relevant and pertinent evidence not previously considered by the Office.

As appellant did not show that the Office erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument not previously considered by the Office and did not submit relevant and pertinent evidence not previously considered by the Office, the Office acted within its discretion in denying appellant's request for a merit review.

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<sup>3</sup> Dr. John Kelley indicated that an MRI was performed on April 27, 1998, not 1997, as he first reported.

<sup>4</sup> *James A. Long*, 40 ECAB 538, 541-42 (1989).

The decisions of the Office of Workers' Compensation Programs dated August 20 and March 9, 1999 are affirmed.

Dated, Washington, DC  
March 19, 2001

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member