

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA D. ABE and U.S. POSTAL SERVICE,
Frederick, MD

*Docket No. 02-260; Submitted on the Record;
Issued July 23, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On August 18, 1996 appellant, then a 46-year-old automation clerk, sustained a left knee strain on May 16, 1997 with subsequent arthroscopy while in the performance of duty.

The Office provided appellant with vocational rehabilitation assistance and she began training for a job as a medical transcriptionist on August 10, 1999. She stopped attending classes on March 18, 2000, moved out of state and left no forwarding address.

By decision dated July 24, 2000, the Office found that appellant had failed, without good cause, to undergo vocational rehabilitation as directed. The Office reduced appellant's compensation benefits based on what her wage-earning capacity would have been had she cooperated with vocational rehabilitation efforts and completed her training for a medical transcriptionist job.

By letter dated July 20, 2001, appellant requested reconsideration and submitted additional evidence.

By decision dated September 5, 2001, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and not sufficient to warrant further merit review.¹

¹ The record contains additional evidence that was not before the Office at the time it issued its September 5, 2001 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

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.² As appellant filed her appeal with the Board on December 3, 2001, the only decision properly before the Board is the Office's September 5, 2001 decision denying her request for reconsideration. The Board has no jurisdiction to consider the Office's July 24, 2000 decision reducing appellant's compensation benefits.³

The Board finds that the Office properly denied appellant's request for reconsideration.

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 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.⁴ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁵

In statements dated June 9 and August 4, 2000, appellant alleged that she stopped attending her vocational rehabilitation courses in March 2000 because of medical problems. She stated that she was depressed, had memory problems and was unable to sit for very long periods of time.

A medical report dated June 2, 2000 indicated that appellant was treated for depression. The report did not address the issue of appellant's ability to attend her vocational rehabilitation classes in March 2000. Therefore, this report does not constitute relevant and pertinent evidence not previously considered by the Office.

In a letter dated July 31, 2000, Judy Hunt Neal, one of appellant's instructors and her faculty adviser, stated that she taught appellant in the fall of 1999 and spring of 2000 but appellant was not feeling well during the spring semester and had bouts of crying and panic attacks in the classroom. She stated that appellant could not concentrate or retain what she was learning and she suggested that appellant consult a physician. However, a statement from someone who is not a physician does not constitute relevant and pertinent evidence not previously considered by the Office.

In a letter dated August 10, 2000, Dr. Kim M. Grant, a psychiatrist, stated that appellant was not able to attend classes "currently" because her concentration, memory and judgment were very poor. However, this report does not address the issue of whether appellant was able to attend classes in March 2000. Therefore, this evidence does not constitute relevant and pertinent evidence not previously considered by the Office.

² 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

³ See *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-109 (1989).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.608(b).

Appellant also submitted medical evidence regarding her treatment for a bipolar disorder in 1998. This evidence does not address the issue of her ability to continue her vocational rehabilitation in March 2000 and, therefore, it 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, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent evidence not previously considered by the Office, the Office properly denied her request for reconsideration.

The decision of the Office of Workers' Compensation Programs dated September 5, 2001 is affirmed.

Dated, Washington, DC
July 23, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member