

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LaVERN PARTRIDGE and U.S. POSTAL SERVICE,  
DETROIT BULK MAIL CENTER, Detroit, MI

*Docket No. 02-280; Submitted on the Record;  
Issued June 13, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

This is the second appeal in the present case. In a July 11, 2000 decision, the Board affirmed the Office's decisions dated December 7 and August 27, 1998. The Board found that the Office properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128(a) on the basis that her request did not meet the requirements set forth under section 8128<sup>1</sup> and the Office properly determined appellant's request for reconsideration dated November 24, 1998 was untimely and failed to present clear evidence of error. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.<sup>2</sup>

In a letter dated September 11, 2000, appellant requested reconsideration of the decision dated July 11, 2000. Appellant submitted a narrative statement indicating that she sustained two heart attacks. She noted that she was still experiencing health problems including fecal leakage, breathing problems and sleeplessness. Appellant noted that she had numerous doctor bills which had not been paid. She indicated that the Office did not fairly interpret Dr. Poleck or Dr. Meyers reports. Appellant noted that she did not delay in reporting her claim as the Office alleged and indicated that she called the Office when the injury occurred and reported it to the medical unit at the employing establishment. She further noted that she promptly reported the incident to her manager as well as to another co-worker and witnesses.

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<sup>1</sup> 20 C.F.R. § 10.608(b).

<sup>2</sup> Docket No. 99-1155 (issued July 11, 2000).

By decision dated December 11, 2000, the Office denied appellant's application for review without conducting a merit review on the grounds that the evidence submitted was irrelevant and immaterial and insufficient to warrant review of the prior decision.

The only decision before the Board on this appeal is the Office decision dated December 11, 2000. Since more than one year elapsed from the date of issuance of the Office's August 27, 1998 merit decision to the date of the filing of appellant's appeal, December 10, 2001, the Board lacks jurisdiction to review this decision.<sup>3</sup>

The Board finds that the Office in its December 11, 2000 decision properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128(a) on the basis that her request for reconsideration did not meet the requirements set forth under section 8128.<sup>4</sup>

Under section 8128(a) of the Act,<sup>5</sup> the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,<sup>6</sup> which provide that a claimant may obtain review of the merits if her written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence which:

“(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].”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>7</sup>

In the present case, the Office denied appellant's claim without conducting a merit review on the grounds that the evidence submitted was irrelevant and immaterial. The narrative statement submitted by appellant was duplicative of evidence already contained in the record,<sup>8</sup>

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<sup>3</sup> See 20 C.F.R. § 501.3(d).

<sup>4</sup> See 20 C.F.R. § 10.606(b)(2)(i-iii)

<sup>5</sup> 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.606(b) (1999).

<sup>7</sup> 20 C.F.R. § 10.608(b).

<sup>8</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case; see *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

and was previously considered by the Office and found deficient. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review. Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did she submit relevant and pertinent evidence not previously considered by the Office.<sup>9</sup> Therefore, appellant did not submit relevant evidence not previously considered by the Office.

The decision of the Office of Workers' Compensation Programs dated December 11, 2000 is hereby affirmed.

Dated, Washington, DC  
June 13, 2002

Alec J. Koromilas  
Member

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>9</sup> 20 C.F.R. § 10.606(b).