

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JEANETTE SHEPPARD and U.S. POSTAL SERVICE,  
POST OFFICE, Philadelphia, PA

*Docket No. 03-857; Submitted on the Record;  
Issued July 22, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review on its merits

This is appellant's third appeal before the Board. In the first appeal, by decision dated November 24, 1999, the Board affirmed the Office's decision dated May 15, 1998 finding that the Office properly terminated appellant's compensation entitlement under 5 U.S.C. § 8106(c) effective May 24, 1998 on the grounds that she refused an offer of suitable work.<sup>1</sup> The Board further affirmed a September 11, 1998 decision of the Office's Branch of Hearings and Review denying appellant's request for an oral hearing as untimely filed. The facts and circumstances are set out in the prior decision and are hereby incorporated by reference.

In the second appeal, the Board affirmed the Office's August 11, 2000 decision finding that the evidence of record supported that the position offered was suitable to appellant's partially disabled condition, such that the Office properly terminated her compensation entitlement under 5 U.S.C. § 8106(c) effective May 24, 1998 on the grounds that she refused an offer of suitable work.<sup>2</sup> A petition for reconsideration was denied by order of the Board dated December 5, 2002. The additional facts and circumstances of the case are set out in the second decision and are hereby incorporated by reference.

The only decision before the Board on this appeal is the Office's February 12, 2003 nonmerit decision. The most recent decision on the merits in this case is the Board's own June 21, 2002 decision, for which a petition for reconsideration was denied on

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<sup>1</sup> Docket No. 99-399 (issued November 24, 1999).

<sup>2</sup> Docket No. 00-2650 (issued June 21, 2002).

December 5, 2002.<sup>3</sup> As this decision was the Board's own decision and as a petition for reconsideration was filed and denied, there is no other merit decision of the Office for the Board to review.

In support of appellant's December 9, 2002 request for reconsideration, appellant submitted argument to the effect that in its June 2, 2002 decision the Board committed an error of fact in that Dr. Martin Plutzer, a Board-certified psychiatrist and psychoanalyst, did not release appellant back to an eight-hour workday, which was a requirement of the offered position. The Office reviewed this argument and determined on February 12, 2003 that Dr. Plutzer had previously specifically stated that there was no reason why appellant could not work eight hours per day. Accordingly, the Office denied appellant's request for a merit review.

The Board finds that the Office properly refused to reopen appellant's case for further merit review.

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by constituting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) 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.

In this case, the Office had previously determined and the Board had affirmed, that Dr. Plutzer had specifically stated that there was no reason why appellant could not work eight hours per day, such that appellant's argument had no basis in fact.<sup>4</sup> Appellant, therefore, did not advance a relevant legal argument not previously considered and consequently, provided no basis for reopening the case for further review on its merits. The Office, consequently, properly invoked section 10.608(b) and denied appellant's request for further review of her case on its merits.

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<sup>3</sup> The Board will not review its own decision except on petition for reconsideration filed within 30 days of the date of the final decision. *See* 20 C.F.R. § 501.7(a). The decision of the Board shall be final as to the subject matter appealed and such decision shall not be subject to review, except by the Board. *See* 20 C.F.R. § 501.6(c).

<sup>4</sup> *See Helen E. Paglinawan*, 51 ECAB 591 (2000); *Linda I. Sprague*, 48 ECAB 386 (1997); *David E. Newman*, 48 ECAB 305 (1997) (duplicious or repetitive arguments are not a basis for reopening a case for further review on its merits).

Accordingly, the decision of the Office of Workers' Compensation Programs dated February 12, 2003 is hereby affirmed.

Dated, Washington, DC  
July 22, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member