

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BRENDA S. RUFFIN and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Jackson, MS

*Docket No. 01-1147; Submitted on the Record;  
Issued December 21, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for merit review.

This case is on appeal before the Board for the second time. Previously, the Board affirmed the Office's February 2, 1999 decision denying appellant's claim for a recurrence of disability on July 17, 1997. Appellant failed to submit rationalized medical opinion evidence establishing a causal relationship between her current physical and emotional conditions and her accepted employment injury of March 3, 1997.<sup>1</sup>

On November 17, 2000 appellant filed a request for reconsideration. The Office denied appellant's request by decision dated December 21, 2000. Appellant subsequently filed another request for reconsideration with the Office on January 2, 2001. By decision dated February 8, 2001, the Office denied appellant's most recent request for reconsideration without addressing the merits of her claim.

The Board finds that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.<sup>2</sup> Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated

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<sup>1</sup> Docket No. 99-1301 (issued June 22, 2000). The Board's decision is incorporated herein by reference.

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

under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>3</sup>

Appellant's November 17, 2000 and January 2, 2001 requests for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second requirements under section 10.606(b)(2).

Appellant merely submitted a copy of her October 30, 1997 claim form which was already part of the record. Consequently, appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2) of submitting relevant and pertinent new evidence not previously considered by the Office.<sup>4</sup>

Because appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office acted within its discretion in denying appellant's November 17, 2000 and January 2, 2001 requests for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated February 8, 2001 and December 21, 2000 are hereby affirmed.

Dated, Washington, DC  
December 21, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member

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<sup>3</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>4</sup> The record also includes emergency department medical records from Mississippi Baptist Medical Center for treatment appellant received on June 15, 2000. At the time, appellant presented with complaints of left knee pain, unrelated to either of her accepted conditions. The Office received these documents several months prior to appellant's recent requests for reconsideration and they are clearly not relevant to appellant's claimed recurrence of disability on July 17, 1997.