

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of INGRID DINVALDS and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

*Docket No. 00-751; Submitted on the Record;
Issued January 25, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs, by its October 7, 1999 decision, abused its discretion by refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim did not constitute an abuse of discretion.

On October 9, 1998 appellant, then a 40-year-old mail processor, filed a traumatic injury claim alleging that on September 24, 1998 she sustained injury to her lower and middle back while performing her duties, *i.e.*, sweeping and stooping. The Office denied appellant's claim on November 24, 1998 on the grounds that the evidence of record failed to establish a causal relationship between the September 24, 1998 employment-related incident and any medical condition. By letter dated September 21, 1999, appellant requested reconsideration of the November 24, 1998 decision. By decision dated October 7, 1999, the Office denied review of the prior decision.

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.¹ Because more than one year has elapsed between the issuance of the Office's November 24, 1998 decision and December 10, 1999, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the November 24, 1998 decision and any preceding decisions. Therefore, the only decision before the Board is the Office's October 7, 1999 nonmerit decision denying appellant's appeal for a review of its November 24, 1998 decision.

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

To require the Office to reopen a case for merit review, section 10.606 provides that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and setting forth arguments or submitting evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.² When a claimant fails to meet at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.³

In support of the September 21, 1999 request for reconsideration, appellant submitted various documents previously of record.⁴ Also submitted were documents dealing with conditions existing prior to the September 24, 1998 incident.⁵

In an August 11, 1999 report, Dr. John Petty, Board-certified in physical medicine and rehabilitation, stated that he saw appellant that day, that she described frequent bending and twisting in her work and discussed a history of back problems including degenerative disc disease. However, Dr. Petty failed to provide a rationalized medical opinion addressing the causal relationship between the September 24, 1998 employment-related incident and his diagnosed medical condition. Evidence of record reveals that on October 7, 1998 appellant gave a history of on September 24, 1998 when driving home from the employing establishment she was getting out of her car and felt some pain in her mid back which was not work related.

The medical evidence submitted on reconsideration does not address the irrelevant issue of whether appellant sustained an injury causally related to the September 24, 1998 employment-related incident.⁶

As appellant's September 21, 1999 request for reconsideration does not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying that request.

² 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

³ 20 C.F.R. § 10.608(a).

⁴ *Eugene F. Butler*, 36 ECAB 393, 398 (1984) (finding that 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).

⁵ The Board notes that none of the evidence discussed an aggravation of a preexisting condition.

⁶ The Board has held that the submission of argument or evidence which does not address the particular issue involved does not constitute a basis for reopening a case. *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

The decision of the Office of Workers' Compensation Programs dated October 7, 1999 is hereby affirmed.

Dated, Washington, DC
January 25, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member