

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LAVERNA BARBER and U.S. POSTAL SERVICE,  
SANDY SPRINGS POST OFFICE, Atlanta, GA

*Docket No. 01-1546; Submitted on the Record;  
Issued February 8, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for reconsideration.

The Board has duly reviewed the case record and finds that the Office acted within its discretion in refusing to reopen appellant's case for further reconsideration of the merits.

On April 21, 1990 appellant, then a 47-year-old letter carrier, filed a notice of traumatic injury claiming that she injured her back and legs when she was wedged between two 80-pound tubs. Appellant's claim was accepted for lumbar sprain, neck sprain and displacement of lumbar intervertebral disc. Appellant was paid appropriate compensation benefits.

On April 4, 1998 appellant returned to light-duty work. Appellant stopped work on April 2, 1999 and filed a claim for continuing disability beginning April 2, 1999. The Office denied appellant's claim on August 6, 1999 since the evidence was not sufficient to establish that she was totally disabled beginning April 2, 1999 due to the effects of her April 21, 1990 injury.

Appellant requested an oral hearing, which was held on December 16, 1999. By decision dated March 3, 2000, the hearing representative affirmed the Office's August 6, 1999 decision.

In an undated letter received on March 2, 2001, appellant requested reconsideration. Appellant submitted a personal statement dated January 10, 2001, physical therapy reports, and a report from Dr. Naresh Parikh, a Board-certified internist, dated January 4, 2001 and a report from Jamie D. Pappas, a Board-certified internist, dated December 9, 1999.

By decision dated March 23, 2001, the Office denied appellant's request for reconsideration.

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.<sup>1</sup> Because more than one year has elapsed between the issuance of the Office's March 3, 2000 merit decision and May 17, 2001, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the March 3, 2000 decision and any preceding decisions. Therefore, the only decision before the Board is the Office's March 23, 2001 nonmerit decision denying appellant's application for a review of its March 3, 2000 decision.

Section 8128(a) of the Federal Employees' Compensation Act<sup>2</sup> does not give a claimant the right upon request or impose a requirement upon the Office to review a final decision of the Office awarding or denying compensation. Section 8128(a) of the Act, which pertains to review, vests the Office with the discretionary authority to determine whether it will review a claim following issuance of a final Office decision. The Office through regulations, has placed limitations on the exercise of that discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>3</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.<sup>4</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>5</sup> When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.<sup>6</sup>

The relevant issue in this case was medical in nature. Appellant's claim was denied because of insufficient rationalized medical evidence to establish a causal relationship between her claimed period of disability beginning April 2, 1999 and her employment injury. In support of her request for reconsideration, appellant submitted mostly factual evidence which is irrelevant to the issue at hand and insufficient to warrant merit review. Only the reports from Dr. Parikh and Dr. Pappas addressed appellant's claimed period of disability. In his January 4, 2001 report, Dr. Parikh merely stated: "This is an amendment to a letter dated December 9, 1999 which states that this patient was totally disabled during this time." Dr. Parikh's report is restating information already contained in the record and is cumulative in nature. The December 9, 1999 report from Dr. Pappas is already of record and is duplicative evidence insufficient to warrant merit review. The Board has held that evidence which repeats or

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

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

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 20 C.F.R. § 10.606.

<sup>5</sup> 20 C.F.R. § 10.607.

<sup>6</sup> 20 C.F.R. § 10.608.

duplicates evidence already contained in the record has no evidentiary value and does not constitute a basis for reopening a case.<sup>7</sup>

Appellant has not established that the Office abused its discretion in its March 23, 2001 decision by denying her request for review on the merits because she 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 new evidence not previously considered by the Office.

The March 23, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
February 8, 2002

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> *Paul Kovash*, 49 ECAB 350 (1998).