

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA E. SIDES and U.S. POSTAL SERVICE,
POST OFFICE, Greensboro, NC

*Docket No. 02-805; Submitted on the Record;
Issued September 12, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has duly reviewed the case record in the present appeal and finds that the Office abused its discretion by refusing to reopen appellant's case for a further review of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

The only decision before the Board on this appeal is the Office's October 31, 2000 decision, denying appellant's application for a reconsideration of the Office's October 6, 1999 merit decision.¹ Because more than one year has elapsed between the issuance of the Office's October 6, 1999 merit decision and October 23, 2001, the postmarked date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the October 6, 1999 decision.²

The Office's procedures pertaining to the requirements for obtaining a review of a case on its merits under 5 U.S.C. 8128(a), state as follows:

“(b) The application for reconsideration, including all supporting documents, must:

- (1) Be submitted in writing;
- (2) Set forth arguments and contain evidence that either:

¹ By this decision, the Office hearing representative denied modification of a December 3, 1998 decision, which found that appellant refused an offer of suitable work.

² See 20 C.F.R. § 501.3(d)(2).

- (i) Shows that [the Office] erroneously applied or interpreted a specific point of law;
- (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].”³

When a claimant fails to meet one of the above-mentioned standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁴

In support of her October 4, 2000 reconsideration request, appellant submitted an undated handwritten narrative statement wherein she claimed that, as Dr. James S. Kramer, a Board-certified orthopedic surgeon, had no further medical treatment to offer her, she was seeking medical treatment from Drs. Stephan A. Grubb, a Board-certified orthopedic surgeon and Brenda S. Waller, a physical medicine specialist, as well as from a physical therapist. Appellant claimed that her injury had greatly changed her life physically and financially, that she did not give Dr. Kramer incorrect information regarding the physical requirements of the job offer and that appellant did not feel she had refused any job or done anything wrong. Appellant additionally submitted a duplicate November 5, 1998 report, from Dr. Kramer and copies of the July 28 and August 3, 1998 job offers.

Appellant also submitted a new September 12, 2000 report, from Dr. Kramer, in which he stated that she did not provide him with accurate information regarding the physical requirements of the job offer, a new medical report dated June 30, 2000, from Dr. Waller which addressed the efficacy of her present therapy, her residual symptomatology and its consequent physical limitations and new medical reports, from Dr. Grubb dated January 12, March 7 and June 6, 2000, which discussed her injury-related physical activity limitations.

The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all the evidence, which may be necessary to discharge his or her burden of proof.⁵ The requirements pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.⁶ In this case, appellant has submitted new evidence in the form of new medical reports from Drs. Kramer, Waller and Grubb, which were not previously considered by the Office. The Office, therefore, is required to reopen appellant’s case to consider the substance of these reports on their merits.

³ 20 C.F.R. § 10.606 (b)(1),(2).

⁴ 20 C.F.R. § 10.608(b); *see also Mohamed Yunis*, 46 ECAB 827 (1995); *Elizabeth Pinero*, 46 ECAB 123 (1994); *Joseph W. Baxter*, 36 ECAB 228 (1984).

⁵ *Paul Kovash*, 49 ECAB 350 (1998); *Helen E. Tschantz*, 39 ECAB 1382 (1988).

⁶ *See* 20 C.F.R. § 10.606(b)(2)(iii).

Accordingly, the decision of the Office of Workers' Compensation Programs dated October 31, 2000 is hereby set aside and the case is remanded to the Office for review of the entire record, to be followed by a *de novo* decision on the merits of the case

Dated, Washington, DC
September 12, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member