

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL B. DAVIS and U.S. POSTAL SERVICE,
POST OFFICE, San Diego, CA

*Docket No. 03-849; Submitted on the Record;
Issued July 25, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further reconsideration of the merits of his claim.

On September 15, 2001 appellant, then a 39-year-old automation clerk, filed a claim alleging that he developed a sore elbow, shoulder, hand and wrist while operating the flat sorting machine.

By decision dated November 19, 2001, the Office rejected appellant's claim finding that the medical evidence submitted did not address causal relationship with his employment.

On January 17, 2002 appellant requested reconsideration of the November 19, 2001 decision. In support of his undated reconsideration request received by the Office on January 17, 2002, appellant submitted multiple physical therapy progress reports, two reports from Dr. Lindy M. O'Leary, a Board-certified occupational medicine physician, dated October 12 and November 23, 2001, and reports from Dr. Ripdeep Mangat, a Board-certified family practitioner, dated September 8 and 10, 2001, which indicated that the issue of whether the diagnosed condition was caused or aggravated by employment activities was to be determined by occupational medicine. In her October 12, 2001 report, Dr. O'Leary diagnosed left arm pain of unknown cause. However, on February 19, 2002 the Office also received a January 4, 2002 report from Dr. O'Leary which discussed the causal relationship of appellant's left shoulder symptoms and factors of his federal employment, opining that the repetitive work for the employing establishment casing mail and doing bar codes eight hours per day resulted in appellant sustaining left shoulder strain, rotator cuff impingement and tendinitis.

By decision dated February 20, 2002, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was irrelevant and immaterial and not sufficient to warrant review of the prior decision. In the Office's limited review of the evidence submitted, it addressed the reports from Dr. Mangat dated September 8 and 10, 2001, and the reports from Dr. O'Leary dated October 12 and

November 23, 2001 only. The Office did not address Dr. O'Leary's January 4, 2002 report received by the Office on February 19, 2002.

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 his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The only decision before the Board on this appeal is the Office's February 20, 2002 nonmerit decision denying appellant's application for a reconsideration of the Office's November 19, 2001 decision denying appellant's claim on the grounds that he failed to establish causal relationship. Because more than one year has elapsed between the issuance of the Office's November 19, 2001 merit decision and February 6, 2003, the postmarked date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the November 19, 2001 decision.¹

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 point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent 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. Evidence or argument that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.² Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.³

In this case, appellant submitted multiple physical therapy progress reports which have no probative value.⁴ He also submitted two reports from Dr. O'Leary in which she diagnosed left arm pain of unknown cause and gave no opinion on causal relationship. Appellant further submitted reports from Dr. Mangat, who gave no opinion on causal relationship in his September 8, 2001 report and in his September 10, 2001 report he indicated that the issue of whether the diagnosed condition was caused or aggravated by employment activities was to be determined by occupational medicine. Additionally, the September 10, 2001 report from Dr. Mangat had been previously considered for the November 19, 2001 Office decision. These reports were either duplicative or irrelevant as they did not address causal relation. These reports do not constitute relevant and pertinent new evidence not previously considered by the Office which would require reopening of appellant's claim for further consideration on its merits.

However, appellant also submitted new and relevant medical evidence from Dr. O'Leary in a January 4, 2002 report which discussed the causal relationship of appellant's left shoulder

¹ 20 C.F.R. § 501.3(d)(2)(ii).

² *Helen E. Paglinawan*, 51 ECAB 591 (2000).

³ *Kevin M. Fatzner*, 51 ECAB 407 (2000).

⁴ *See Thomas R. Horsfall*, 48 ECAB 180 (1996) (a physical therapist's reports are not medical evidence as a physical therapist is not a physician under the Federal Employees' Compensation Act).

symptoms and factors of his federal employment. This report has not been previously considered by the Office and is relevant to the question at issue. Therefore, appellant met the requirements for requesting reconsideration under 20 C.F.R. § 10.606(b)(1) and (2)(iii).⁵ The Board finds that Dr. O’Leary’s report is sufficient to require reopening appellant’s case for further review on its merits. As the Office failed to review this new report which addresses causal relation, it abused its discretion in denying appellant’s request for further merit review. The February 20, 2002 decision will be set aside and the case remanded for consideration of all of this evidence.

Consequently, the decision of the Office of Workers’ Compensation Programs dated February 20, 2002 is hereby set aside and the case is remanded for further action in accordance with this decision and order of the Board.

Dated, Washington, DC
July 25, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁵ See *Claudio Vazquez*, 52 ECAB 496 (2001).