U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of LINDA M. CATIGLIONE-LALLA and U.S. POSTAL SERVICE, MID-ISLAND MAIL PROCESSING FACILITY, Melville N.Y.

*Docket No. 97-897; Submitted on the Record;*
*Issued February 18, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion in declining to reopen appellant's claim for merit review.

On September 20, 1989 appellant, then a 26-year-old flat-sorting machine operator, filed a notice of traumatic injury, claiming that she hurt her lower back when she caught a bucket of mail falling off a case. The Office accepted the claim for a lumbar strain. Appellant returned to half-time limited duty on November 28, 1989.

Subsequently, appellant claimed a recurrence of disability on February 4, 1990 and received disability compensation through her pregnancy until she returned to part-time limited duty on December 16, 1990. She again claimed recurrences of disability on February 3 and August 16, 1991 but accepted a limited-duty job offer on April 28, 1992 and indicated that she would return to work following her maternity leave.

On January 7, 1993 the Office denied the claims on the grounds that the medical evidence was insufficient to establish that appellant's recurrences of disability were causally related to the initial work injury. Appellant timely requested a hearing, which was scheduled three times and finally held on June 28, 1994.

On August 10, 1995 the hearing representative denied the claim on the grounds that the medical evidence was insufficient to establish that the claimed recurrences of disability were causally related to the 1989 work injury. The hearing representative added that appellant had failed to establish either a change in her work-related back condition or a change in her light-duty assignments.

On July 10, 1996 appellant requested reconsideration on the grounds that a postal inspection, which resulted in a criminal fraud charge, an arbitration, and an ultimate reinstatement and award of back pay, had tainted her case and prejudiced her claims of

recurrence of disability. On September 20, 1996 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant merit review of its prior decision.

The Board finds that the Office did not abuse its discretion in declining to reopen appellant's claim for merit review.[1]

Section 8128(a) of the Federal Employees' Compensation Act[2] provides for review of an award for or against payment of compensation. Section 10.138(b)(1) of the Office's federal regulations provides, in pertinent part, that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and the specific issues within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed.[3]

With the written request, the claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.[4] Section 10.138(b)(2) of the implementing regulations provides that any application for review which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.[5] Abuse of discretion by the Office is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions that are contrary to both logic and probable deductions from established facts.[6]

In this case, appellant submitted the following evidence in support of her request for reconsideration: letters and memoranda from the Office and the employing establishment; medical evidence from Dr. Stanley Margolis, a Board-certified orthopedic surgeon; Dr. Eugene F. Kuchner, Board-certified in neurological surgery; Dr. David T. Zitner, a Board-certified orthopedic surgeon; Dr. James F. Dana, Board-certified in physical medicine and rehabilitation; and Dr. Burt S. Horwitz, a Board-certified orthopedic surgeon; an arbitration award dated July 20, 1995 reinstating appellant to her postal position and awarding back pay; a March 4, 1993 letter from appellant's mother, a credit card purchase record; a January 23, 1992 affidavit from a postal inspector; and several disability forms.

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[1] The Board's scope of review is limited to those final decisions issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c), 501.3(d)(2). Inasmuch as appellant filed her notice of appeal on December 12, 1996, the Board has jurisdiction only of the Office's nonmerit decision dated September 20, 1996.

[2] 5 U.S.C. §§ 8101-8193; 5 U.S.C. § 8128(a).

[3] *Vicente P. Taimanglo*, 45 ECAB 504, 507 (1994).

[4] 20 C.F.R. § 10.138(b)(1).

[5] 20 C.F.R. § 10.138(b)(2).

[6] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

Except for the July 20, 1995 arbitration award, all of the evidence appellant submitted on reconsideration was previously of record and, where relevant, considered by the Office in determining that appellant had failed to meet her burden of proof in establishing that her recurrences of disability were causally related to the 1989 lumbar sprain. Therefore, none of this evidence requires the Office to reopen appellant's claim.[7]

Appellant argues that the protracted postal investigation of her activities and the fact that she was pregnant during the 1990 and 1991 recurrences of disability biased the conclusions of Dr. Zitner, the second opinion specialist. Appellant also contends that the arbitration award demonstrates that Dr. Zitner was unduly influenced by reports from the employing establishment that appellant was pregnant and untruthful, and that she engaged in physical activities outside work that belied any disability. These arguments were proffered prior to and at the oral hearing by appellant and are therefore insufficient to require the Office to reopen appellant's claim Moreover, appellant's contentions are irrelevant to the central issue of causal relationship because the denial of benefits is based on the insufficiency of the medical evidence to meet appellant's burden of proof.[8]

Finally, the arbitration award does not address the issue of whether the claimed recurrences of disability represented a spontaneous return of symptoms such that the accepted work injury could be said to have precipitated, aggravated, or accelerated subsequent disability.[9] While the arbitrator sustained appellant's grievance regarding her removal and reinstated her to her former position, nothing in his report establishes that her recurrences of disability in 1991 were connected with the 1989 lumbar strain accepted by the Office as work related. Therefore, the arbitration award is irrelevant and insufficient to require the Office to review appellant's claim on the merits.

Appellant argues on appeal that the Office violated its procedures in denying reconsideration because her request was assigned to a claims examiner who had initially issued the January 7, 1993 decision denying compensation. The record reveals that the January 7, 1993 decision was signed by a senior claims examiner, Lucia DiRuggiero, and not by Kevin M. Kates, who signed the September 20, 1996 letter to appellant denying reconsideration. Mr. Kates wrote the memorandum in justification of the 1993 denial but the handwritten corrections in this memorandum indicate that Ms. DiRuggiero took responsibility for the decision. In any event, Mr. Kates, as senior claims examiner denying reconsideration, "was not involved in making the contested decision," which was the hearing representative's August 10, 1995 decision.[10]

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[7] *See James A. England*, 47 ECAB 115 (1995) (finding that evidence repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case).

[8] *See Dominic E. Coppo*, 44 ECAB 484, 488 (1993) (finding that allegations of error of fact irrelevant to the issue of causation are insufficient to warrant reopening of a claim).

[9] *See Jose Hernandez*, 47 ECAB 288 1996) (finding that medical reports that failed to address directly the causal relationship between appellant's recurrence of disability and his employment injuries were insufficient to meet appellant's burden of proof).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 1602.2(b) (May 1996).

The Board finds that appellant has not shown that the Office erroneously applied or interpreted a point of law, or advanced a point of law or fact not previously considered by the Office, or submitted relevant and pertinent evidence not previously considered by the Office. Accordingly, the Board finds that the Office properly declined to review appellant's request for reconsideration.[11]

The September 20, 1996 decision of the Office of Workers' Compensation is affirmed.

Dated, Washington, D.C.
February 18, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[11] *See Norman W. Hanson*, 45 ECAB 430, 435 (1994) (finding that the Office properly declined to reopen a claim because appellant presented no new and relevant evidence).