

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MONIQUE M. LAVERDURE and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Manchester, NH

*Docket No. 98-302; Submitted on the Record;
Issued November 12, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for merit review.

On January 25, 1994 appellant, then a 38-year-old flat sorting machine clerk, developed back pain after repetitive heavy lifting and twisting and then sitting back in her chair. In a March 25, 1994 letter, the Office accepted appellant's claim for lumbar strain. Appellant received continuation of pay for the period February 4 through March 20, 1994 and authorization for buy back of leave or temporary total disability compensation for intermittent periods thereafter. She also was offered and accepted, a series of limited-duty positions, first as a modified distribution clerk and subsequently as an office worker. On March 21, 1994 appellant filed a claim for fibromyalgia, chronic fatigue syndrome and lumbosacral neuritis which she related to a hostile work environment at the flat sorting machine as well as heavy lifting and turning. In an August 24, 1994 decision, the Office rejected appellant's occupational injury claim on the grounds that fact of an injury was not established as appellant had not submitted medical evidence showing that the claimed conditions were causally related to her employment. In an October 28, 1994 decision, the Office terminated appellant's compensation for a lumbar strain effective September 21, 1994. In a February 17, 1995 merit decision, the Office denied appellant's request for modification of its October 28, 1994 decision. In a September 1, 1995 merit decision, the Office again denied appellant's request for modification. In an April 9, 1996 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was immaterial and therefore insufficient to warrant review of its prior decision.

On February 12, 1995 appellant filed a claim for stress which exacerbated depression and anxiety which she related to her back injury at work. Among the evidence submitted by appellant was a February 6, 1995 report from Dr. Michael A. Evans, a Board-certified psychiatrist, who diagnosed recurrent major depression, post-traumatic stress disorder and a personality disorder with dependent hysteroid and borderline features. He noted that appellant

had an eight-year history of depression but stated that she did not appear depressed at the time of his examination. Dr. Evans commented that physical symptoms appeared to exacerbate her dysthymic state. He indicated that if appellant returned to her regular duties of sorting mail and bending and lifting it was likely that she would again begin to experience physical pain which could exacerbate her depression. In a November 1, 1995 decision, the Office rejected appellant's claim on the grounds that the evidence of record failed to demonstrate a causal relationship between appellant's employment and the claimed condition or disability.

In a July 14, 1996 letter, appellant requested reconsideration. She submitted in support of her request another copy of Dr. Evans' February 6, 1995 report. In an October 22, 1996 decision, the Office denied appellant's claim on the grounds that the evidence submitted in support of the request was repetitious and therefore insufficient to warrant review of its prior decision.

The Board has jurisdiction over final decisions of the Office issued within one year prior to the filing of an appeal with the Board.¹ As appellant's appeal was filed on October 22, 1997, the Board has jurisdiction only over the Office's October 22, 1996 decision.

The Board finds that the Office properly denied appellant's request for reconsideration.

Under 20 C.F.R. §10.138(b)(1), a claimant may obtain a review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) 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.² 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.³ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁴ In this case, appellant only submitted Dr. Evans' February 6, 1995 report in support of her claim. This report had previously been submitted and reviewed by the Office prior to its November 1, 1995 decision denying appellant's claim. The submission of the report in support of the request for reconsideration therefore was repetitive. As a result, the Office properly denied appellant's request for reconsideration.

¹ 20 C.F.R. § 501.3(d).

² 20 C.F.R. § 10.138(b)(2).

³ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁴ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decision of the Office of Workers' Compensation Programs, dated October 22, 1996, is hereby affirmed.

Dated, Washington, D.C.
November 12, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member