

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBIN G. BOYD and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 99-3; Submitted on the Record;
Issued April 19, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits.

The Board has duly reviewed the case on appeal and finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits.

Appellant, a machine operator, filed a notice of recurrence of disability on July 7, 1995 alleging a recurrence of disability causally related to a December 22, 1989 employment injury. The Office noted that appellant attributed her left knee condition to a change in work duties and developed her claim as a new injury. The Office denied her claim on January 10, 1996 finding that she failed to establish a causal relationship between her left knee condition and her employment duties. Appellant requested an oral hearing and by decision dated December 3, 1996, the hearing representative affirmed the Office's January 10, 1996 decision. She requested reconsideration on December 1, 1997 and by decision dated February 10, 1998, the Office found that the evidence submitted was repetitious and insufficient to require review of the merits.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.¹ 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 review the merits of the claim.²

¹ 20 C.F.R. § 10.138(b)(1).

² 20 C.F.R. § 10.138(b)(2).

In support of her request for reconsideration, appellant submitted a magnetic resonance imaging scan report already included in the record. Material which is 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.³ Furthermore, this report does not address the reason for which the Office denied appellant's claim, the failure to submit sufficient medical opinion evidence to establish a causal relationship between either appellant's 1989 employment injury or her occupational duties and her current diagnosed left knee condition. Therefore this report is not relevant.

Appellant also submitted a note dated December 22, 1997 from Dr. Milton M. Smith, a Board-certified pediatrist, noting that appellant had continued pain in her left knee, that she was working limited duty and requesting authorization for arthroscopy. This note is also substantially similar to others in the record and fails to address the issue of the causal relationship between appellant's current condition and either her employment duties or her 1989 employment injury. Therefore, this note is repetitious and is not relevant to the issue for which the Office denied appellant's claim.

The decision of the Office of Workers' Compensation Programs dated February 10, 1998 is hereby affirmed.

Dated, Washington, D.C.
April 19, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

³ See *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).