

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHARLES P. PASCHAL and U.S. POSTAL SERVICE,  
POST OFFICE, Grand Junction, CO

*Docket No. 99-504; Submitted on the Record;  
Issued April 20, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's July 18, 1998 request for reconsideration.

In a decision dated July 23, 1997, the Office found that the weight of the medical evidence, as represented by the opinion of Dr. Maurice D. Brown, an orthopedic surgeon and Office referral physician, established that appellant no longer continued to suffer from residuals of his June 16, 1993 employment injury.

On July 18, 1998 appellant requested reconsideration. In support thereof he argued that the Office misinterpreted Dr. Brown's opinion, that Dr. Brown supported continuing residuals in his initial report and did not address the presence or absence of continuing residuals in his supplemental report.

In a decision dated July 30, 1998, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of appellant's request for reconsideration was immaterial and insufficient to warrant review of its prior decision.

The Board finds that the Office properly denied appellant's July 18, 1998 request for reconsideration.

Section 10.138(b)(1) of Title 20 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.<sup>1</sup>

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<sup>1</sup> 20 C.F.R. § 10.138(b)(1).

Appellant has not shown that the Office erroneously applied or interpreted a point of law, nor has he submitted relevant and pertinent evidence not previously considered by the Office. Accordingly, he may not obtain a merit review of his claim based on the first or third requirement set forth above.

Appellant, instead, has attempted to advance a point of fact not previously considered by the Office, namely, that Dr. Brown's opinion supports continuing residuals. The Board has conducted a limited review of the evidence for the purpose of determining whether appellant's argument has merit. The Board finds that the record does not support the point of fact urged by appellant on reconsideration. Dr. Brown reported that while appellant had evidence of continuing metatarsalgia, current symptoms were not related to the work injury of June 16, 1993. He explained that an aggravation occurred on June 16, 1993 but that appellant should have recovered from that exacerbation in two or three months following the date of injury.

Although the reopening of a case for merit review may be predicated solely on a legal premise, such reopening is not required where the contention does not have a reasonable color of validity.<sup>2</sup> For this reason, the Board finds that appellant is not entitled to a merit review of his claim under the second requirement above.

Because appellant's request for reconsideration does not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office properly denied his request.<sup>3</sup>

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<sup>2</sup> See *Constance G. Mills*, 40 ECAB 317 (1988) (legal premise not previously considered must have reasonable color of validity); see generally *Daniel O'Toole*, 1 ECAB 107 (1948) (that which is offered as an application should contain at least the assertion of an adequate legal premise, or the proffer of proof, or the attachment of a report or other form of written evidence, material to the kind of decision which the applicant expects to receive as the result of his application; if the proposition advanced should be one of law, it should have some reasonable color of validity to establish an application as *prima facie* sufficient).

<sup>3</sup> 20 C.F.R. § 10.138(b)(2).

The July 30, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
April 20, 2000

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member