

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM E. PARKER and U.S. POSTAL SERVICE,
POST OFFICE, Trenton, NJ

*Docket No. 00-73; Submitted on the Record;
Issued November 29, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant's intermittent periods of disability between 1996 and 1998 following his November 20, 1995 employment injury were causally related to the employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's requests for reconsideration.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the Office, dated and finalized January 27, 1999, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

Following the issuance of the Office hearing representative's January 27, 1999 decision, appellant requested reconsideration by letters dated February 19 and May 20, 1999 and submitted additional evidence. By decisions dated March 25 and May 28, 1999, the Office denied appellant's request for reconsideration.¹

The Board finds that the Office did not abuse its discretion in denying appellant's requests for reconsideration.

Section 10.606(b)(2) 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 specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.² Section 10.608(b) provides that, when an application for review of

¹ The Board notes that this record contains additional evidence which was not before the Office at the time it issued its March 25 and May 28, 1999 decisions. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

² 20 C.F.R. § 10.606(b)(2) (1999).

the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.³

In a report dated February 11, 1999, Dr. Kevin J. Lickfield, appellant's attending family practitioner, provided a history of appellant's November 20, 1995 employment injury and his course of treatment. The record shows that appellant's claim was denied because he failed to provide sufficient medical evidence explaining how his intermittent periods of disability between 1997 and 1998 were causally related to his November 20, 1995 employment injury. As this February 11, 1999 report of Dr. Lickfield does not address the issue of causal relationship, it does not constitute relevant and pertinent evidence not previously considered by the Office and is not sufficient to require the Office to reopen appellant's claim for further merit review.

In a letter dated April 23, 1999, Dr. Lickfield stated that it was his professional opinion that appellant's absences from work were related to his November 20, 1995 employment injury. However, he did not provide any medical rationale on the issue of causal relationship. Therefore this letter does not constitute relevant and pertinent evidence not previously considered by the Office and is not sufficient to require the Office to reopen appellant's claim for further merit review.

The Board notes that, in its March 25 and May 28, 1999 decisions, the Office did not specifically address form reports from Dr. Lickfield dated August 24, 1998 through April 20, 1999, submitted subsequent to the issuance of the Office hearing representative's January 27, 1999 decision. However, the Board finds that this is harmless error as these reports contain virtually the same information as in earlier form reports from this physician which were considered by the Office previously. Therefore these reports do not constitute relevant and pertinent evidence not previously considered by the Office and are not sufficient to require the Office to reopen appellant's claim for further merit review.

³ 20 C.F.R. § 10.608(b) (1999).

The decisions of the Office of Workers' Compensation Programs dated May 28, March 25 and January 27, 1999 are affirmed.

Dated, Washington, DC
November 29, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member