

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOEL BELCHICK, executor of the estate of CLAUDINE BELCHICK and
U.S. POSTAL SERVICE, POST OFFICE, Grand Rapids, MI

*Docket No. 00-1534; Submitted on the Record;
Issued April 4, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for review of the merits on January 26, 2000.

This case has previously been on appeal before the Board. In its November 3, 1999 decision, the Board found that appellant had not met his burden of proof in establishing that the employee's injury occurred in the performance of duty as her injury did not occur on the employing establishment premises, did not occur in a parking facility owned, maintained or controlled by the employing establishment and did not involve a special hazard at the particular off-premises point.¹

Following the Board's decision, appellant, through his attorney, requested reconsideration from the Office on January 5, 2000. In support of the request for reconsideration, his attorney resubmitted the appeal letter to the Board dated January 16, 1998² which contained legal arguments in support of appellant's claim that the employee's injury occurred in the performance of duty. By decision dated January 26, 2000, the Office declined to reopen appellant's claim for consideration of the merits.³

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits.

¹ Docket No. 98-921.

² Appellant also stated that he was filing a claim for death benefits. As the Office has not issued a final decision on this claim, the Board will not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

³ The Office stated that the case record contained 601 pages. However, the Board received a record of 119 pages. The record contains the request for reconsideration and the supporting argument as well as copies of the January 16, 1998 letter previously before the Board. Therefore, the Board finds that the record is sufficient for an informed adjudication.

The Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the claimant: (1) has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office or; (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁴

In this case, appellant's attorney argued that the employee's injury occurred due to a special hazard at a particular off-premises point. As the Board considered this aspect of appellant's claim in issuing its November 3, 1999 decision, these legal arguments have previously been considered and are not sufficient to require the Office to reopen appellant's claim for consideration of the merits.

The January 26, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 4, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁴ 5 U.S.C. §§ 10.609(a) and 10.606(b).