

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRISTINE MARIE PALMER and U.S. POSTAL SERVICE,
POST OFFICE, Ontario, CA

*Docket No. 00-1967; Submitted on the Record;
Issued August 3, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further merit review under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record in this appeal and finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for merit review.

On December 5, 1996 appellant, then a 34-year-old letter carrier, filed a claim for injury alleging that on November 6, 1996 she injured her back while "walking down the street carrying a heavy load."

By letter dated January 6, 1997, the Office advised appellant that her attending physician should submit an attending physician's report within 30 days from the date of the letter.

In an attending physician's report dated January 22, 1997, received by the employing establishment on February 5, 1997 and the Office on February 12, 1997, Dr. Albert Simpkins, appellant's treating physician and Board-certified in orthopedic surgery, related appellant's history of injury noting that she felt a pinch in the low back on November 6, 1996 while walking with a heavy load of mail. His diagnosis was "discogenic in the lumbar spine."

By decision dated February 27, 1997, the Office denied appellant's claim on the grounds that she failed to establish that the event occurred as alleged and that she therefore failed to establish that an injury occurred in the performance of duty.¹

By letter dated March 26, 1997, appellant requested review of the written record.

¹ The Board notes that the Office did not cite Dr. Simpkins' January 22, 1997 report in its decision.

By decision dated July 30, 1997, the hearing representative reviewed the written record including Dr. Simpkins' January 22, 1997 report and found that appellant did sustain "a pinch in her lower back" while performing her duties, and therefore found that the incident as alleged occurred. However, the hearing representative also found that appellant provided no rationalized medical opinion evidence to establish that a compensable injury was sustained as a result of the November 6, 1996 work incident and affirmed the Office's February 27, 1997 decision denying benefits.²

By decision dated March 24, 1998, appellant requested reconsideration.

In support of her petition, appellant submitted a December 3, 1997 medical report from Dr. Simpkins. In his report, Dr. Simpkins related appellant's history of injury noting that she alleged she "experienced a sharp pinch in her lower back when, on November 6, 1996, she reached up above shoulder level to place some mail in a mailbox approximately six feet from the ground." He noted that he examined her on December 4, 1996, and determined at that time that she had a lumbar disc derangement with a superimposed subacute lumbar strain. He then noted that appellant "sustained instant and direct trauma to her lumbar spine that occurred in the course and scope of her employment [on November 6, 1996.] This injury resulted in a tearing of the annulus of the lower lumbar dis[c], as well as the fascia and musculature on the right side of the lumbar spine near its insertion to the right posterior-superior iliac spine." Upon examination on December 3, 1997, Dr. Simpkins stated that appellant's symptoms remained unchanged since November 6, 1996.

By merit decision dated March 31, 1998, the Office denied appellant's petition. The Office noted that Dr. Simpkins' December 3, 1997 report included an incorrect history of injury as alleged by appellant and thus determined that the medical evidence was insufficient to warrant a modification of the hearing representative's July 30, 1997 decision. The Office stated that because Dr. Simpkins stated that appellant injured herself reaching up above shoulder level to place mail in a mailbox that was elevated off the ground, and that appellant noted in her claim that she felt a pinch in her back while walking along the street, his history of injury was incorrect and thus his medical opinion was not supported by appellant's history of injury.

By letter dated June 15, 1998, appellant requested "a formal reconsideration hearing" and alleged that she injured her back while reaching up to a mailbox that was approximately six feet above ground. She stated:

"The mailbox I was approaching is approximately six feet above the ground in height, on top of a fence. Upon arrival at this mailbox, while still in a walking motion, I reached up above shoulder height, opened the box, put the mail in, closed the box, took a step and felt a sharp pinch in my lower back, and buttock area."

² The hearing representative stated that the Office on January 6, 1997 advised appellant "of the specific nature of the medical opinion evidence necessary to establish her entitlement to benefits under the Federal Employees' Compensation Act." However, the January 6, 1997 letter requested only that appellant's attending physician fill out an attached attending physician's report.

In a report dated August 21, 1998, appellant's supervisor stated that he did not locate a box on appellant's route that was six feet off the ground.

By merit decision dated September 16, 1998, the Office modified the March 13, 1998 decision of the hearing representative finding that appellant did not establish fact of injury. The Office found that because appellant was unable to provide an address for the mailbox that she alleged was six feet off the ground, and that because the employing establishment was unable to identify a mailbox of the type appellant described on her route, the Office found that "fact of injury does not exist in this claim."

By undated letter received *via facsimile* on November 1, 1998, appellant requested reconsideration of the Office's September 16, 1998 decision.

In a report dated December 19, 1998, the employing establishment stated that the mailbox that appellant allegedly referred to was five feet two inches from the ground to the bottom of the mailbox. Pictures were provided.

By merit decision dated January 21, 1999, the Office modified its September 16, 1998 decision "to reflect fact of injury while in the performance of duty." However, the Office also found that the medical evidence failed to establish a causal relationship between the November 6, 1996 incident and her low back condition.

By letter dated January 20, 2000, appellant requested reconsideration.

By nonmerit decision dated February 14, 2000, the Office denied appellant's request for reconsideration.

The only decision before the Board in this appeal is the Office's decision dated February 14, 2000 denying appellant's application for review. As more than one year elapsed between the date of the Office's most recent merit decision issued on January 21, 1999 and the date of appellant's appeal, May 12, 2000, the Board lacks jurisdiction to review the merits of appellant's claim.³

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁴ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.⁵ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁶ To be entitled to merit review of an Office

³ 20 C.F.R. § 501.3(d)(2).

⁴ Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b).

⁶ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.⁷

In this case, appellant's medical evidence submitted in support of her January 20, 2000 request for reconsideration constituted repetitive evidence which the Office had previously considered. The Office had considered Dr. Simpkins' December 3, 1997 report in its March 31, 1998 decision. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening the case.⁸ Consequently, the repetitive nature of this evidence renders it insufficient to warrant reopening of appellant's claim on the merits.⁹ Inasmuch as the newly submitted evidence on reconsideration is repetitious, appellant is not entitled to a review of the merits of her claim. Further, appellant's additional evidence filed in support of her reconsideration including medical bills, her narrative describing her injury and discussion regarding her supervisor's failure to recall her reporting of her incident, is irrelevant to the issue of whether appellant's medical condition was causally related to her accepted low back condition.

Inasmuch as appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a point of law not previously considered by the Office or to submit relevant and pertinent evidence not previously considered by the Office, the Office properly refused to reopen appellant's claim for a review on the merits.

The February 14, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
August 3, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ 20 C.F.R. § 10.607.

⁸ *Saundra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

⁹ *James A. England*, 47 ECAB 115, 119 (1995).