

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA J. KELLY and U.S. POSTAL SERVICE,
POST OFFICE, Newark, NJ

*Docket No. 00-2743; Submitted on the Record;
Issued August 17, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has established that her cervical condition arose in the performance of her federal duties as alleged on April 14, 1999 and whether she sustained a consequential emotional condition as a result; and (2) whether the Office of Workers' Compensation Programs abused its discretion by denying merit review of appellant's claim.

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 February 17, 2000 decision of the Office hearing representative is in accordance with the facts and the law in the case and hereby adopts the findings and conclusions of the hearing representative.¹

The Board further finds that the Office improperly denied merit review in its May 26, 2000 decision.

On February 24, 2000 appellant, through counsel, requested reconsideration and submitted medical record evidence from St. Barnabas Hospital. No legal arguments were advanced. In its decision dated May 26, 2000, the Office denied appellant's request, finding that the February 24, 2000 letter and accompanying medical evidence did not include new legal arguments and was incomplete and, therefore, lacked sufficient probative value to warrant merit review.

The Office stated that the medical records from Dr. Burke and St. Barnabas Hospital, the medical providers who had treated appellant immediately after the claimed injury of April 14,

¹ A claimant seeking compensation under the Federal Employees' Compensation Act (5 U.S.C. §§ 8101-8193) has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is being claimed is causally related to the employment injury. *See Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996); *Melinda C. Epperly*, 45 ECAB 196 (1993); *Elaine Pendleton*, 40 ECAB 1143 (1989).

1999, were critical to determining whether the injury occurred as alleged. Although appellant's attorney submitted the medical records from St. Barnabas Hospital, he failed to submit the medical records from Dr. Burke, despite the Office's request on April 19, 2000. Accordingly, the Office found that modification of its prior decision was unwarranted.

Pursuant to 20 C.F.R. § 10.138(b)(1) in effect on June 5, 1998 and 20 C.F.R. § 10.606 in effect on January 6, 1999, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent new evidence not previously considered by the Office.² Formerly, at section 10.138(b)(2), section 10.608(a) 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 reviewing the merits of the claim.³ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁴ Evidence that does not address the particular issue involved also does not constitute a basis for reopening the case.⁵

In this case, appellant's claim for her alleged cervical condition of April 14, 1999 was denied on the basis that medical evidence contemporaneous with after the injury was not provided. The Office hearing representative deemed those records critical in either confirming or refuting appellant's claim for an injury occurring on April 14, 1999.

In his February 24, 2000 reconsideration request, appellant's counsel submitted records from St. Barnabas Hospital, which the Office hearing representative had requested. Moreover, the file contains an April 29, 2000 report from Dr. Burke, which was date stamped as being received by the Office on May 12, 2000, prior to the issuance of the May 26, 2000 decision. Dr. Burke's April 29, 2000 report and the records from St. Barnabas Hospital are new and relevant evidence concerning appellant's claim of injury on April 14, 1999.

The Act⁶ provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim. Because the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision,⁷ the Office must review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. Board decisions are final as to the subject matter appealed,⁸ thus, it is crucial that all evidence relevant

² 20 C.F.R. § 10.606(b)(2) (1999). *See generally* 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.608(a) (1999).

⁴ *Howard A. Williams*, 45 ECAB 853 (1994).

⁵ *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Edward Mathew Diekemper*, 31 ECAB 224-25 (1979).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *See* 20 C.F.R. § 501.2(c).

to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.⁹

In this case, the Office did not review either the records from St. Barnabas Hospital or the April 29, 2000 report of Dr. Burke, which were new and relevant to the issue and were received prior to the issuance of the May 26, 2000 decision. On remand, the Office must fully consider the evidence which was submitted before the May 26, 1999 decision.

The February 17, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed. The May 26, 2000 decision is set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
August 17, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁸ 20 C.F.R. § 501.6(c).

⁹ *William A. Couch*, 41 ECAB 548 (1990).