

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY H. APARICIO and U.S. POSTAL SERVICE,
POST OFFICE, Bakersfield, CA

*Docket No. 00-865; Submitted on the Record;
Issued February 13, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

On August 8, 1994 appellant, then a 43-year-old mail processor, sustained a cervical and left shoulder strain while in the performance of duty.¹ After intermittent periods of partial disability, appellant returned to work on October 18, 1995 in a full-time, limited-duty capacity as a modified distribution clerk.

On July 15, 1998 appellant's treating physician, Dr. P.R. Chandrasekaran, a Board-certified orthopedic surgeon, recommended that she reduce her work schedule from eight to six hours per day.² Appellant followed her physician's advice and on July 30, 1998 she filed a notice of recurrence of disability (Form CA-2a).

After further development of the record, the Office denied appellant's claim for recurrence of disability in a decision dated November 5, 1998. The Office explained that the

¹ Appellant was also diagnosed with cervical degenerative disc disease, unrelated to her August 8, 1994 employment injury.

² Dr. Chandrasekaran initially examined appellant on February 18, 1998 at which time he diagnosed cervical degenerative disc disease with mild radiculopathy. In a report dated July 15, 1998, Dr. Chandrasekaran again noted a diagnosis of cervical degenerative disc disease. He further reported that appellant complained of pain on the left side of her neck and left shoulder, which increased in intensity after six hours of work. Additionally, Dr. Chandrasekaran indicated that because of appellant's increased symptoms her workday should be reduced from eight hours to six hours for a period of two weeks. In a September 4, 1998 report, he noted that appellant was permanently restricted to a six-hour workday.

medical evidence failed to establish a causal relationship between appellant's current partial disability and her accepted employment-related conditions.³

Appellant subsequently requested reconsideration on December 1, 1998. Her request was accompanied by two recent reports dated November 20 and October 16, 1998 from Dr. Chandrasekaran. In his October 16, 1998 report, he stated that appellant has "documented evidence of injury which has precipitated symptoms of degenerative cervical disc disease with radicular pain into the left upper extremity." Dr. Chandrasekaran noted that appellant had reduced mobility of the left shoulder due to strain and impingement syndrome as well as degenerative cervical disc disease. Dr. Chandrasekaran's November 20, 1998 supplemental report specifically identified the objective findings that supported his October 16, 1998 opinion.

In a decision dated September 29, 1999, the Office denied appellant's request without reaching the merits of her claim. The Office found that Dr. Chandrasekaran's recent reports were merely cumulative in nature and as such, the newly submitted evidence did not warrant reopening the record for merit review.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.⁴ As appellant filed her appeal with the Board on December 20, 1999, the Board lacks jurisdiction to review the Office's merit decision dated November 5, 1998. Consequently, the only decision properly before the Board is the Office's September 29, 1999 decision denying reconsideration.

The Board finds that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.⁵ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁶

³ When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position, or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the employment-related condition or a change in the nature and extent of the light-duty job requirements. *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

⁵ 20 C.F.R. § 10.606(b)(2) (1999).

⁶ 20 C.F.R. § 10.608(b) (1999).

Appellant's December 1, 1998 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second requirements under section 10.606(b)(2).

Appellant submitted Dr. Chandrasekaran's November 20 and October 16, 1998 reports. Neither report, however, offers any insight on the causal relationship between appellant's current partial disability and her previously accepted August 8, 1994 employment injury. In fact, the newly submitted evidence suggests that appellant's current disability is primarily, if not entirely, due to her cervical degenerative disc disease, a condition the Office has not accepted as being related to appellant's August 8, 1994 employment injury. Inasmuch as Dr. Chandrasekaran's most recent reports reiterate his prior objective findings and assessment of appellant's condition while providing no additional probative information regarding causal relationship, the November 20 and October 16, 1998 reports are cumulative in nature.⁷ Consequently, appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying appellant's December 1, 1998 request for reconsideration.⁸

⁷ Evidence that is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening the claim. *James A. England*, 47 ECAB 115, 119 (1995); *Sandra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

⁸ The record on appeal includes evidence that was not submitted to the Office prior to the issuance of its September 29, 1999 decision denying reconsideration. Inasmuch as the Board's review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).

The September 29, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 13, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member