

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KIMBERLY K. PERSON and U.S. POSTAL SERVICE,
POST OFFICE, Phoenix, AZ

*Docket No. 00-912; Submitted on the Record;
Issued February 9, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On July 17, 1997 appellant, then a 33-year-old letter carrier, filed a claim for traumatic injury (Form CA-1), alleging that on July 16, 1997 she sustained an injury in the performance of duty.

By decision dated April 21, 1998, the Office accepted appellant's claim for bilateral knee abrasions and contusions but denied her claim for compensation from September 1 to November 21, 1997 on the grounds that the medical evidence did not establish disability for that period.

On January 29, 1998 appellant filed a claim for compensation on account of traumatic injury or occupational disease (Form CA-7) alleging that she was totally disabled during the period November 1 to December 19, 1997 due to the July 16, 1997 employment injury.

By decision dated May 22, 1998, the Office found that the medical evidence of record was insufficient to establish that appellant was totally disabled during the period November 1 to December 19, 1997.

By letter dated May 22, 1999, appellant requested reconsideration. In support of her request for reconsideration, appellant submitted a medical report dated February 8, 1999 from Dr. Basil E. Smith, appellant's treating Board-certified orthopedic surgeon, who stated that he had examined appellant on August 13 and November 7, 1997 and determined that she had low back pain, lumbosacral strain and, based on his November 1997 examination, spina bifida occulta. He noted that at the time of the initial examination on August 13, 1997 appellant "apparently was off work from her prior doctor, because I did not place her off work." He added that appellant returned to work after November 7, 1997.

In a September 1, 1999 decision, the Office denied appellant's request for reconsideration without reviewing the merits of the claim on the grounds that the evidence submitted was repetitious and not relevant to the issue for which the Office denied appellant's claim.

The Board has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretion in denying appellant's request for review of the merits of his claim.

The only decision before the Board in this appeal is the Office's decision dated September 1, 1999 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 May 22, 1998 and the date of appellant's appeal, November 23, 1999, the Board lacks jurisdiction to review the merits of appellant's claim.¹

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² 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.³ 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.⁴ To be entitled to merit review of an Office 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.⁵

The Board finds that the medical evidence submitted in support of appellant's request for reconsideration constituted repetitive evidence, which the Office had previously considered. The Office had considered Dr. Smith's November 21, 1997, attending physician's report in which he stated that she had low back pain, lumbosacral sprain and strain and spina bifida occulta. He did not indicate that appellant was totally disabled as a result of a work-related injury. 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.⁶ Consequently, the repetitive nature of this evidence renders it insufficient to warrant reopening of appellant's claim on the merits.⁷ Inasmuch as the newly submitted evidence on reconsideration is repetitious, appellant is not entitled to a review of the merits of her claim.

¹ 20 C.F.R. § 501.3(d)(2).

² 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).

³ 20 C.F.R. § 10.606(b).

⁴ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁵ 20 C.F.R. § 10.607.

⁶ *Saundra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

⁷ *James A. England*, 47 ECAB 115, 119 (1995).

In her appeal, appellant raised issues concerning her use of her sick leave balance from September 1 to November 7, 1991 and continuation of pay from November 7 to 21, 1997. Appellant's request for sick leave involves an administrative function of the employing establishment and is not before the Board.⁸ With respect to appellant's request for continuation of pay, the Board's finding regarding the Office's denial of appellant's request for reconsideration renders that issue moot.

The decision of the Office of Workers' Compensation Programs dated September 1, 1999 is hereby affirmed.

Dated, Washington, DC
February 9, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁸ *James C. Bavelly*, 31 ECAB 933 (1980).