

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERSIE L. JACKSON and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, TN

*Docket No. 00-1069; Submitted on the Record;
Issued February 12, 2001*

DECISION and ORDER

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

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

The Board has duly reviewed the case record in the present appeal and finds that the Office acted within its discretion in denying appellant's request for review.

The only decision before the Board in this appeal is the Office's decision dated October 25, 1999 denying appellant's application for review.

Section 10.606 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (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.¹ Section 10.608 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.²

On April 12, 1997 appellant, then a 43-year-old mail processor, filed an occupational disease claim alleging that as a result of continuous typing on a computer she sustained carpal tunnel syndrome of the right and left hands, and a spur in her back. In a decision dated July 7, 1997, the Office denied appellant's claim on the grounds that she did not establish that her condition was caused by employment-related factors. The Office found that appellant merely submitted an excuse slip with work limitations from Dr. John P. Howser, a Board-certified

¹ 20 C.F.R. § 10.606(b).

² 20 C.F.R. § 10.608; *Norman W. Hanson*, 45 ECAB 430 (1994).

neurologist, who provided neither a diagnosis nor an opinion on the cause of appellant's condition. Therefore, appellant had not submitted rationalized medical evidence explaining how her condition was employment related.

By letter dated October 8, 1997,³ appellant requested reconsideration of the Office's July 7, 1997 decision and submitted additional evidence in support of her request. In a decision dated November 6, 1997, the Office found that the newly submitted evidence was insufficient to warrant modification of the prior decision.

By letter dated June 1, 1998, appellant again requested reconsideration and submitted additional evidence. In a decision dated September 2, 1998, the Office denied appellant's request on the grounds that the evidence submitted did not relate appellant's condition to her employment and was insufficient to warrant modification of the prior decision. The Office found that, while the evidence showed that Dr. Howser felt that appellant's neck and back problems were due to a fall that occurred at work, there was no record of such an incident ever taking place. The Office also found that, although Dr. Howser opined that appellant's carpal tunnel problems were the result of repetitive motion at work, no rationale supporting his conclusion was presented.

By letter dated August 28, 1999, appellant again requested reconsideration and submitted additional evidence in support of her request. In a decision dated October 25, 1999, the Office denied appellant's request on the grounds that the newly submitted evidence was insufficient to warrant another review on the merits.

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.⁴

With her request for reconsideration, appellant submitted three brief reports from Dr. Howser in which he did not discuss the cause of her condition. She also submitted hospital records pertaining to her carpal tunnel release surgery that was performed by Dr. Howser on September 23, 1998, as well as further evidence of her job duties. The additional evidence, however, is irrelevant because it does not contain a rationalized medical opinion from appellant's physician explaining how specific factors caused or contributed to her condition. This evidence is therefore insufficient to warrant another review on the merits. As appellant failed to raise substantive legal questions or to submit new relevant and pertinent evidence, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

The decision of the Office of Workers' Compensation Programs dated October 25, 1999 is hereby affirmed.

³ The record indicates that by letter dated August 8, 1997 appellant requested a review of the written record. On August 27, 1997 she withdrew the request.

⁴ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

Dated, Washington, DC
February 12, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member