

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHANIE M. DAVIS and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Memphis, TN

*Docket No. 00-1114; Submitted on the Record;
Issued February 12, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
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 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 19, 1999 denying appellant's application for review. As more than one year elapsed between the date of the Office's most recent merit decision, dated and finalized on September 28, 1998, and the filing of appellant's appeal, postmarked January 12, 2000 and received by the Board on January 21, 2000, the Board lacks jurisdiction to review the merits of appellant's claim.¹

Section 10.606 of Title 20 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 point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.² Section 10.607 provides that, when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.

On December 21, 1997 appellant, then a 32-year-old mailhandler, filed a notice of traumatic injury alleging that on that day she injured her left leg in the performance of duty. In a

¹ 20 C.F.R. § 501.3(d)(2). The Board notes that appellant initially requested oral argument before the Board but did not appear at the scheduled date and time.

² 20 C.F.R. § 10.606(b).

decision dated April 16, 1998, the Office accepted appellant's claim for a left ankle contusion and sprain and a left hip strain. The Office found that appellant's left ankle contusion had resolved, but that appellant was entitled to additional medical treatment for her left hip and ankle strains.

The Office noted that, while medical notes provided by appellant addressed her treatment beginning February 21, 1998 for facial numbness, body weakness, fibromyalgia, low back spasms, carpal tunnel syndrome, thoracic outlet problems and temporomandibular joint symptoms, the medical evidence of record was insufficient to support a causal relationship between these additional conditions and appellant's December 21, 1997 employment injury.

By letter dated August 11, 1998, appellant requested reconsideration of the Office's April 16, 1998 decision and submitted additional evidence. In a decision dated September 28, 1998, the Office found that the newly submitted evidence was insufficient to warrant modification of the prior decision.

On September 25, 1999 appellant again requested reconsideration and submitted additional evidence in support. In a decision dated October 19, 1999, the Office denied appellant's request on the grounds that she neither raised substantive legal questions nor included new and relevant evidence.

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 deduction from established facts.³

In her request for reconsideration, appellant asserted that, as a result of her December 21, 1997 employment injury, in addition to the conditions accepted by the Office, she sustained a recurrence of fibromyalgia syndrome and developed lumbar facet syndrome. Some of the evidence submitted subsequent to the Office's September 28, 1998 decision consists of copies of documents previously contained in the record and, therefore, is duplicative. Material which 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 a case.⁴

Appellant submitted progress notes from Dr. John P. Howser, a Board-certified neurological surgeon, dated October 12 and November 12, 1998 and September 22, 1999. Dr. Howser's progress notes document appellant's treatment for fibromyalgia and lumbar facet syndrome, in addition to her hip and leg conditions, but do not provide a rationalized medical opinion explaining how specific factors of appellant's employment caused or contributed to these additional conditions. Thus, Dr. Howser's notes are not relevant to the issue of causal relationship.

³ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁴ See *James A. England*, 47 ECAB 115 (1995); *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

In addition, appellant submitted medical reports from Dr. William T. Herring, an internist, whose September 11, 1998 report merely paraphrases his August 10, 1998 report, which was contained in the record at the time of the Office's prior decision. Therefore, this report is cumulative of evidence already in the record and does not constitute a basis for reopening the case.⁵

In his report dated December 2, 1998, Dr. Herring referenced a prior report in which he assigned work restrictions based on both accepted and nonaccepted conditions and stated that he did not feel that appellant's conditions had resolved and that she continued to require therapy. Dr. Herring did not indicate what conditions he was referring to or offer an opinion on the cause of these conditions. Thus, his December 2, 1998 report is also insufficient to require the Office to reopen appellant's claim for a review of the merits.⁶

As appellant failed to raise substantive legal questions or to submit new relevant and pertinent evidence not previously reviewed by the Office, the Office acted within its discretion refusing to reopen appellant's claim for review of the merits.

The October 19, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 12, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁵ *Severiano Marquez*, 41 ECAB 637 (1990); *Eugene F. Butler*, 36 ECAB 393 (1984).

⁶ *Richard L. Ballard*, 44 ECAB 146, 150 (1992) (evidence that does not address the particular issue involved does not constitute a basis for reopening the claim).