

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOAN J. HARRIGAN and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, West Palm Beach, FL

*Docket No. 00-1366; Submitted on the Record;
Issued July 16, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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.

On October 24, 1991 appellant, then a 38-year-old mailhandler, filed a notice of traumatic injury and claim for continuation of pay/compensation, alleging that, on October 11, 1991, while lifting a sack, she sustained injuries to her right back and shoulder blade. On March 25, 1992 appellant's claim was accepted for a cervical strain with radiculopathy.

On June 4, 1997 appellant filed a claim for recurrence, alleging that she sustained a recurrence of her prior accepted injury when she underwent surgery on January 15, 1997. The record indicates that on January 15, 1997 Dr. Emilio S. Musso, a Board-certified orthopedic surgeon, performed an anterior cervical discectomy and fusion C4-5, C5-6 and fibular allograft bone with allograft microscopic technique on appellant.

By decision dated July 25, 1997, appellant's claim for recurrence was denied, as the Office found that appellant failed to establish that the claimed recurrence was causally related to the approved injury of October 11, 1991.

By letter dated August 12, 1997, appellant requested an oral hearing, which was held on April 1, 1998.

By decision dated June 2, 1998, the hearing representative affirmed the June 25, 1997 decision, finding that appellant had not met her burden of establishing by the weight of the substantial medical evidence that the cervical surgery and disability on and after January 31, 1997 was causally related to the accepted injury.

By letter dated May 18, 1999, appellant requested reconsideration. Appellant stated that there was some confusion in her case in that she did not sustain the original injury by lifting

heavy mail, but rather by being hit on the head by falling mail. Appellant stated that a prior claim was being confused with her present claim and further that, her motor vehicle accident cases were being confused with the workers' compensation claim. Appellant's statement was cosigned by two witnesses.

By decision dated June 18, 1999, appellant's request for reconsideration on the merits was denied, as the Office found that the evidence submitted was immaterial in nature and not sufficient to warrant review of the prior decision.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.¹ As appellant filed this appeal on February 7, 2000 the only decision over which this Board has jurisdiction is the June 18, 1999 decision denying reconsideration on the merits.

The Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office regulations provide 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; (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.³ Section 10.608(b) states that any timely application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied without reopening the case for a review on the merits.⁴

The Board finds that appellant set forth no new arguments which established that the Office made an erroneous application of the law, has not advanced a relevant legal argument not previously considered and has not submitted any relevant and pertinent evidence not previously considered by the Office. Accordingly, the Office acted within its discretion when it denied appellant's request for reconsideration.

The only document that appellant submitted on appeal was her personal statement, signed by two witnesses, wherein she contended that the Office was confused as to which claim was before it. She explained that this claim was not for a recurrence of the injury, which happened when she was lifting heavy mail, but rather was for the injury caused to her when she was hit on the head by falling mail. Appellant's contention has no merit. Appellant's notice of traumatic injury refers to her being hurt when attempting to lift a sack of mail. The letter written by appellant on February 19, 1992 clearly stated that the cause of appellant's injury was from lifting

¹ See 20 C.F.R. § 501.3(d)(2).

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(2).

⁴ 20 C.F.R. § 10.608(b).

a sack of mail. Although appellant's claim for recurrence is somewhat ambiguous as to the facts of the original injury, it does state that the original injury occurred in 1991. Furthermore, at the hearing held on April 1, 1998, the hearing representative asked appellant, "Other than the auto[mobile] accident and the incident at work in October of 1991, has anything else occurred that could have impacted on your medical condition?" Appellant responded, "Nothing." Accordingly, the contentions made by appellant in her request for reconsideration that the claimed recurrence actually involved a different work incident have no color of validity. The Board further notes that the issue before the Office was whether appellant's condition was due to her accepted injury, which occurred on October 24, 1991. Accordingly, appellant's arguments on reconsideration are not relevant to the issue at hand.

The June 18, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 16, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member