

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICKY T. ROBINSON and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Tacoma, WA

*Docket No. 00-2813; Submitted on the Record;
Issued July 2, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's case for merit review.

On February 2, 1998 appellant, then a 43-year-old mailhandler, filed an occupational disease claim alleging that his federal employment had aggravated his preexisting condition of arthritis of the hips.¹ By decision dated April 24, 1998, the Office denied appellant's claim on the basis that he failed to establish that his claimed hip condition was caused or aggravated by factors of his employment.

On September 28, 1998 appellant filed a request for reconsideration accompanied by additional medical evidence. In a decision dated October 5, 1998, the Office denied modification.

Appellant filed another request for reconsideration with the Office on August 23, 1999.² By decision dated October 12, 1999, the Office denied appellant's most recent request for reconsideration without addressing the merits of his claim.

The Board finds that the Office acted within its discretion in refusing to reopen appellant's case for merit review.

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

¹ The record indicates that appellant suffered from congenital hip dysplasia. As a teenager, appellant underwent surgery for bilateral slipped capital femoral epiphysis and he subsequently developed arthritis in both hips.

² Appellant's August 23, 1999 filing was purportedly a resubmission of an earlier request for reconsideration dated May 15, 1999. However, there is no indication from the record that the Office received appellant's May 15, 1999 request for reconsideration prior to August 25, 1999.

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.³ 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.⁴

Appellant's August 23, 1999 request for reconsideration, and accompanying letter dated May 15, 1999, neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he 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 his claim based on the first and second requirements of section 10.606(b)(2).

Appellant also failed to submit relevant and pertinent new evidence not previously considered by the Office. Although his August 23, 1999 request for reconsideration was accompanied by an April 13, 1999 rating decision from the Department of Veterans Affairs, this evidence is not relevant to the issue of causal relationship.⁵ The mere fact that appellant's disability rating due to his hip condition was recently increased from 10 to 50 percent does not establish that his condition is causally related to his federal employment. Furthermore, while the April 13, 1999 rating decision referenced recent medical evidence, the underlying medical documentation is not part of the record in this case.

Additionally, the rating decision does not address the issue of causal relationship, but merely reflects that appellant's bilateral hip condition has worsened.⁶ The fact that appellant's condition may have worsened during his federal employment does not establish that his condition is employment related.⁷ As such, appellant's recent submissions do not warrant reopening the claim for a merit review.⁸ Consequently, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office acted within its discretion in denying appellant's August 23, 1999 request for reconsideration.

³ 20 C.F.R. § 10.606(b)(2).

⁴ 20 C.F.R. § 10.608(b).

⁵ Appellant also submitted a March 9, 1992 letter from the Department of Veterans Affairs denying an increased rating based on evidence available in November 1991.

⁶ Findings by a different federal agency are not dispositive regarding issues arising under the Federal Employees' Compensation Act where such findings are made pursuant to different standards of proof. *Wayne E. Boyd*, 49 ECAB 202, 206 (1997).

⁷ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

⁸ Evidence that does not address the particular issue involved does not constitute a basis for reopening the claim. *Richard L. Ballard*, 44 ECAB 146, 150 (1992).

The October 12, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 2, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member