

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHLEEN G. MICHAELS and U.S. POSTAL SERVICE,
POST OFFICE, Chicopee, MA

*Docket No. 01-41; Submitted on the Record;
Issued July 3, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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 did not abuse its discretion in denying appellant's request for review.

On April 10, 1998 appellant, then a 38-year-old letter carrier, filed a traumatic injury claim alleging that on April 6, 1998 she had lower abdominal pain caused by lifting heavy parcels on that day.

By letter dated May 8, 1998, the Office advised appellant to submit factual and medical evidence supportive of her claim. In response, she submitted factual and medical evidence.

By decision dated June 10, 1998, the Office found the evidence of record insufficient to establish fact of injury. The Office found the evidence of record sufficient to establish that the claimed event occurred at the time, place and in the manner alleged. However, the Office found that the evidence of record was insufficient to establish that appellant sustained a medical condition resulting from the incident.

In a July 7, 1998 letter, appellant, through counsel, requested an oral hearing before an Office representative.

In an April 8, 1999 decision, the hearing representative found the evidence of record insufficient to establish that the injury as a result of the accepted employment incident occurred.¹

¹ The hearing representative found that a diagnosis was established, but also found that appellant's doctor failed to support a causal relationship between the diagnosed condition (abdominal pain in right and left side) and her employment.

In an April 5, 2000 letter, appellant, through counsel, requested reconsideration and submitted an affidavit and medical evidence.

By decision dated July 3, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was cumulative and thus insufficient to warrant review of its prior decision.

The Board finds with respect to the Office's July 3, 2000 decision denying reconsideration, that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

The only decision before the Board in this appeal is the Office's decision dated July 3, 2000 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 April 8, 1999 and the filing of appellant's appeal, dated September 25, 2000, the Board lacks jurisdiction to review the merits of appellant's claim.²

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 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 April 5, 2000 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she 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 her claim based on the first and second above-noted requirements under section 10.606(b)(2).

In support of her request for reconsideration of the hearing representative's April 8, 1999 decision, appellant submitted a March 27, 2000 medical report of Dr. Mohamed P. Hamdani, appellant's treating physician and a Board-certified surgeon. In this report, Dr. Hamdani noted his treatment of appellant's right and subsequent left groin areas. He opined that appellant sustained a groin strain due to her lifting at work on April 6, 1998. Dr. Hamdani's report, however, failed to provide any medical rationale explaining how or why the accepted employment incident caused appellant's right and left groin pain. Further, Dr. Hamdani's report is cumulative of his March 22, 1999 medical report, which also failed to provide any medical rationale explaining how or why the accepted employment incident caused appellant's right groin pain. Further, appellant's affidavit is not a medical opinion and thus is insufficient to

² 20 C.F.R. § 501.3(d)(2).

³ 20 C.F.R. § 10.606(b)(2) (1999).

⁴ 20 C.F.R. § 10.608(b) (1999).

establish causal relationship. Consequently, this evidence is not sufficient to warrant reopening the record for merit review.

Inasmuch as appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a point of law not previously considered by the Office or to submit relevant and pertinent evidence not previously considered by the Office, the Office properly refused to reopen appellant's claim for a review on the merits.

The July 3, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 3, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member