

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SYLVIA A. DEXTER and U.S. POSTAL SERVICE  
POST OFFICE, Jacksonville, FL

*Docket No. 00-2310; Submitted on the Record;  
Issued June 4, 2001*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

On September 8, 1998 appellant, a 44-year-old modified (PTF) computerized forwarding system clerk, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she suffered from major depression as a result of her federal employment. Appellant identified February 20, 1998 as the date she first realized her condition was employment related. She explained that she previously sustained an employment-related back injury in 1993 (A6-560421) and that her current emotional condition arose as a result of the stress associated with her return to light duty. Appellant stated, among other things, that the demands of her light-duty assignment exceed her physical limitations.<sup>1</sup> She also indicated that the employing establishment did not provide a suitable workspace for her to carry out her limited-duty assignment.

After further development of the record, the Office issued a May 20, 1999 decision, denying appellant's claim on the basis that she failed to establish that she sustained an injury in the performance of duty. The Office explained that appellant failed to establish any compensable employment factors as the cause of her claimed emotional condition.<sup>2</sup>

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<sup>1</sup> With respect to her prior claim, the record indicates that on July 28, 1997 the Office found appellant's light-duty assignment to be suitable for her work capabilities. Appellant assumed her light-duty assignment on September 27, 1997.

<sup>2</sup> To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors. *See Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Gary M. Carlo*, 47 ECAB 299, 305 (1996).

On February 25, 2000 appellant filed a request for reconsideration. The Office denied appellant's request by decision dated May 11, 2000. Appellant filed another request for reconsideration with the Office on May 18, 2000. The request was accompanied by recent depositions from Dr. Michael S. Scharf, a Board-certified orthopedic surgeon, and Dr. Robert E. Groble, a Board-certified psychiatrist.

By decision dated June 19, 2000, the Office denied appellant's request for reconsideration.

The Board finds that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

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.<sup>3</sup> 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.<sup>4</sup>

Appellant's February 5 and May 18, 2000 requests for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Both submissions merely noted that appellant was seeking reconsideration. 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). With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant did not submit any additional evidence with her February 5, 2000 request for reconsideration. While the February 5, 2000 request for reconsideration referred to the recent depositions of Drs. Scharf and Groble, this evidence was not submitted until May 18, 2000. Although newly submitted, Dr. Scharf's November 15, 1999 deposition and Dr. Groble's December 16, 1999 deposition are neither relevant nor pertinent to the issue on reconsideration. The physician's opinions as to the cause and extent of appellant's current emotional condition are of no probative value with respect to the factual determination of whether appellant identified and established any compensable employment factors as a cause of her claimed emotional condition. As such, this evidence does not warrant reopening the claim for a merit review.<sup>5</sup> Consequently, appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2). As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds

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<sup>3</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>4</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>5</sup> 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).

that the Office did not abuse its discretion in denying appellant's February 25 and May 18, 2000 requests for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated June 19 and May 11, 2000 are hereby affirmed.

Dated, Washington, DC  
June 4, 2001

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member