

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SONYA H. WELLS and U.S. POSTAL SERVICE,  
NORTH ANDREWS ANNEX, Fort Lauderdale, FL

*Docket No. 00-1903; Submitted on the Record;  
Issued May 25, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On April 17, 1992 appellant, then a 28-year-old letter carrier, was pulling into a parking space at the employing establishment parking lot when mail tubs in the back of the postal vehicle fell over as she was braking. Appellant turned to stop the tubs from falling and fell backwards. She noted back pain as she stepped out of the postal vehicle and entered the employing establishment. The Office accepted appellant's claim for cervical strain, shoulder strain and lumbosacral strain. Appellant used sick and annual leave intermittently for the period April 25 through July 19, 1992 and then was placed on leave without pay for up to two hours a day from July 20 to August 16, 1992. The Office began payment of compensation for intermittent periods of disability beginning April 25, 1996.

In an October 9, 1997 decision, the Office terminated appellant's compensation effective that date on the grounds that her injury-related disability had ceased. Appellant requested a hearing before an Office hearing representative which was conducted on July 29, 1998. In an October 9, 1998 decision, the Office hearing representative affirmed the October 9, 1997 decision of the Office.

In an October 4, 1999 decision, appellant requested reconsideration. In a November 15, 1999 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was irrelevant and immaterial and therefore insufficient to warrant review of the prior decisions.

The jurisdiction of the Board is limited to final decisions of the Office issued within one year prior to the filing of an appeal with the Board.<sup>1</sup> As appellant's appeal was filed on May 9, 2000, the Board has jurisdiction only over the Office's November 15, 1999 decision.

The Board finds that the Office properly denied appellant's request for reconsideration.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advanced a point of law not previously considered by the Office, or submitted relevant and pertinent evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>2</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>3</sup> Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.<sup>4</sup>

In the October 4, 1999 letter, appellant contended that the medical evidence of record showed she had sustained a consequential injury of a subjective nature. She stated that Dr. Harold S. Reitman, a Board-certified orthopedic surgeon, indicated in his May 7, 1997 report that he did not know why appellant was having the pain she was having. She cited the August 7, 1996 report of Dr. Peter J. Millheiser, a Board-certified orthopedic surgeon, who noted that appellant had considerable symptom magnification and commented that symptom magnification could be a major factor in chronic pain. She also pointed to the March 18, 1993 report of Dr. Truman J. Ropos, an osteopath, who stated that she had explained to appellant that the chronic pain often took months, even years, to resolve.

In the case of *John R. Knox*,<sup>5</sup> regarding consequential injury, the Board stated:

"It is an accepted principal of workers' compensation law, and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. As is noted by Professor Larson in his treatise: '[O]nce the work-connected character of any injury, such as a back injury, has been established, the

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<sup>1</sup> 20 C.F.R. § 501.3(d).

<sup>2</sup> 20 C.F.R. § 10.608(b).

<sup>3</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

<sup>4</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>5</sup> 42 ECAB 193 (1990).

subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.... [S]o long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable [under] the circumstances. A different question is presented, of course, when the triggering activity is itself rash in the light of claimant's knowledge of his condition.'"<sup>6</sup> (Citations omitted.)

Appellant argued that she had subjective pain that was the consequence of the employment injury. She cited three physicians who noted that she had considerable pain. However, two of those physicians, Dr. Reitman and Dr. Millheiser, had concluded that appellant could return to work. Appellant's compensation was terminated on the basis of Dr. Reitman's report. The mention in these reports of appellant's complaints of pain do not address the issue of whether appellant continued to be disabled due to the effects of her April 17, 1992 employment injury. Appellant's claim of a consequential injury, therefore, is misplaced because she had not submitted any evidence that would show she remains disabled due to the direct effects of the employment injury. The medical reports are insufficient to establish a consequential injury arising out of the employment injury.

The decision of the Office of Workers' Compensation Programs dated November 15, 1999 is hereby affirmed.

Dated, Washington, DC  
May 25, 2001

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>6</sup> *Id.* at 196.