

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CARLOS RUIZ and U.S. POSTAL SERVICE,  
POST OFFICE, Cayey, PR

*Docket No. 00-2345; Submitted on the Record;  
Issued May 23, 2001*

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DECISION and ORDER

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

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

On November 25, 1992 appellant, then a 38-year-old letter carrier, filed a claim for depression and anxiety which he related to work. The Office accepted appellant's claim for depression and paid temporary total disability compensation from October 30, 1992 through November 12, 1993, when appellant returned to work as a distribution clerk.

Appellant stopped working on August 24, 1994 and filed a claim for recurrence of disability. In a December 21, 1995 decision, the Office rejected appellant's claim on the grounds that the evidence failed to demonstrate a causal relationship between the employment injury and the claimed condition or disability. In a February 2, 1996 letter, appellant's representative requested a hearing before an Office hearing representative. In a March 15, 1996 decision, the Office denied appellant's request for a hearing as untimely and, upon its own review, found that the issue in his case could be addressed by submitting additional evidence and requesting reconsideration. In an April 22, 1996 letter, appellant's representative requested reconsideration.

In a December 23, 1996 merit decision, the Office denied appellant's request for modification of the prior decisions. In a September 4, 1997 letter, appellant requested reconsideration. In a February 18, 1998 merit decision, the Office again denied appellant's request for modification. In an October 23, 1998 letter, appellant requested reconsideration, which was denied in a March 11, 1999 merit decision. In a December 3, 1999 letter, appellant requested reconsideration. The Office received the request on February 11, 2000. In an April 13, 2000 decision, the Office denied reconsideration on the grounds that the evidence and the legal arguments submitted in support of the request were irrelevant to the issue in appellant's case and, therefore, insufficient to warrant merit review.

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 July 14, 2000, the Board has jurisdiction to review only the Office's April 13, 2000 decision.

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

Section 8128(a) of the Federal Employees' Compensation Act<sup>2</sup> 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.<sup>3</sup> 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>4</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>5</sup> Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.<sup>6</sup>

In this case, appellant's most recent request for reconsideration, while dated December 3, 1999, was received by the Office on February 11, 2000. The Office's April 13, 2000 decision was, therefore, issued within 90 days of the receipt of the request for reconsideration, as required by the Office's procedures.<sup>7</sup>

In his most recent request for reconsideration, appellant contended that, when he returned to work on November 11, 1993, the job to which he returned was not tailored to his needs. He commented that he had been suffering from back pain since 1987 due to carrying heavy loads of mail on his left shoulder. Appellant stated that he had muscle spasms in his chest when he carried heavy loads. He indicated that the distribution clerk position required heavy lifting that caused considerable pain. Appellant contended that a person working under great pain and depression could not perform a satisfactory job. He stated that the employing establishment, therefore, sent him to a psychiatrist who concluded that he could not perform his job.

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<sup>1</sup> 20 C.F.R. § 501.3(d).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.608(b).

<sup>5</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

<sup>6</sup> *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.2(d) (April 1991).

In support of his request, appellant submitted two x-ray reports. In a June 17, 1987 report, Dr. Jose E. Gonzalez Camacho, a radiologist, stated that x-rays of the dorsal spine showed scoliosis with reduced kyphosis, degenerative bone changes at T9-10 vertebral bodies and overimposed muscular spasm. In a June 13, 1997 report, Dr. Pablo F. Morales Carrasquillo, a Board-certified radiologist, stated that x-rays showed osteophytes in the lower thoracic region with bridging between T9-10, T10-11 and T11-12. He also noted small osteophytes at L4 and L5.

Appellant's claim was accepted for depression. His recurrence of disability was premised on the claim that his accepted emotional condition had rendered him unable to work after August 24, 1994. His most recent request for reconsideration raised a new argument that he was unable to perform the duties of the distribution clerk position due to employment-related back pain, which caused a recurrence of his emotional condition.

Appellant, however, had not previously claimed that he had a back condition causally related to his employment. He did not submit any medical evidence to establish that he had an employment-related back condition, which caused such pain after his return to work that it eventually aggravated his previously accepted emotional condition to the point that he had a recurrence of disability. Appellant's contention is not supported by any evidence of record and, therefore, does not constitute relevant or pertinent evidence.<sup>8</sup>

The only medical evidence submitted by appellant were reports on x-rays taken 10 years apart. The x-rays did not contain any medical information that would relate the findings of the x-rays to appellant's employment or any explanation on how the physical findings shown in the x-rays would have caused a recurrence of disability due to appellant's emotional conditions. These x-ray reports, therefore, are irrelevant to the issue in this case and are insufficient to require the Office to conduct a merit review of appellant's claim.

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<sup>8</sup> *Sherry A. Hunt*, 49 ECAB 467 (1998).

The April 13, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
May 23, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member