

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BRENDA L. BAXTER and U.S. POSTAL SERVICE,  
POST OFFICE, Marietta, GA

*Docket No. 99-2492; Submitted on the Record;  
Issued May 11, 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 abused its discretion in denying appellant's request for reconsideration of the merits.

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office, in its May 5, 1999 decision, to reopen appellant's case for further consideration of the merits of his claim constituted an abuse of discretion.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> As appellant filed her appeal with the Board on August 2, 1999 the only decision properly before the Board is the Office's May 5, 1999 decision denying appellant's request for a review of the merits of the Office's June 8, 1998 decision.<sup>2</sup>

Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advances 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 review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>4</sup>

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<sup>1</sup> 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

<sup>2</sup> Although the record indicates that appellant requested a schedule award for impairment related to her upper extremities and filed a recurrence claim, the Board is without jurisdiction to consider those issues as the Office has not yet adjudicated appellant's entitlement to compensation for the upper extremities; *see* 20 C.F.R. § 501.2(c).

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

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

By letter dated February 16, 1999, appellant's counsel submitted an August 18, 1998 report by Dr. William H. Mather, a Board-certified anesthesiologist, reports dated December 2 and August 28, 1998 by Dr. John G. Sparti, an attending physician, a January 20, 1994 report by Dr. Leslie Kelman, a Board-certified neurologist and a July 8, 1998 report by Dr. Thomas L. Wright, a Board-certified neurologist. She alleged that the hearing representative erred in relying upon the report of Dr. Thomas L. Dopson, a second opinion Board-certified orthopedic surgeon and that appellant's physicians' reports support that she has continuing disability due to her accepted employment injury.

The Board finds that appellant submitted relevant and pertinent evidence not previously considered by the Office when she submitted Dr. Sparti's August 28 and December 2, 1998 reports. These reports were not previously of record and are relevant because they support that appellant continues to be disabled due to her accepted employment injury and are inconsistent with Dr. Dobson's report that appellant has no current disability due to her accepted employment injury. Furthermore, Dr. Sparti had not submitted any prior reports which were considered by the Office in reaching a decision on appellant's claim. Consequently, Dr. Sparti's August 28, and December 2, 1998 reports are relevant and pertinent evidence not previously considered by the Office and are sufficient to require the Office to conduct a merit review of the case.

The Office, in its May 5, 1999 decision denying a merit review, noted weighing the medical evidence by finding Dr. Sparti's report failed to support a causal relationship between appellant's condition and her accepted employment injury. However, the Board has held that the requirement for reopening a claim for merit review does not include the requirement that a claimant must submit all evidence which may be necessary to discharge his or her burden of proof. Instead, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.<sup>5</sup> As noted above, appellant has submitted relevant and pertinent evidence not previously considered by the Office.

Consequently, the case must be returned to the Office for appropriate further development, including reopening appellant's case for a merit review. Following such further development, the Office shall issue an appropriate decision in appellant's case.

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<sup>5</sup> See *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989); *Helen E. Tschantz*, 39 ECAB 1382 (1988).

The decision of the Office of Workers' Compensation Programs dated May 5, 1999 is hereby set aside and the case remanded for a review on the merits.

Dated, Washington, DC  
May 11, 2001

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member