

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ODILE M. SUDELL and U.S. POSTAL SERVICE,
POST OFFICE, Greenwich, CT

*Docket No. 99-2499; Submitted on the Record;
Issued May 10, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

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 of the merits of her claim.

Appellant, a 27-year old clerk, injured her low back on February 21, 1979. She later filed other claims for lower back injuries beginning in 1979. These claims were accepted for lumbosacral strain, sprain and a herniated nucleus pulposus at L4. The Office also accepted that a laminectomy in 1982 was employment related. Appellant was disabled intermittently from her light duties and the Office paid appropriate benefits. The record indicates that she began receiving treatment from Dr. Ervin E. Hanson, a Board-certified neurosurgeon, in 1980. In various reports, Dr. Hanson noted the history of appellant's condition and opined that her low back conditions were employment related.

On December 16, 1996 appellant filed a claim for a recurrence of disability asserting that she stopped work on November 19, 1996 due to her employment injuries.¹ Appellant also requested that the Office authorize spinal fusion surgery recommended by Dr. Hanson. In a March 18, 1997 decision, the Office denied the claim for a recurrence of total disability beginning November 19, 1996 and also denied appellant's request for authorization for surgery. After appellant requested reconsideration, the Office issued merit decisions on December 1, 1997 and May 5, 1998 denying modification of the March 18, 1997 decision. In these decisions, the Office found that the medical evidence was insufficient to establish that appellant sustained a recurrence of disability beginning November 19, 1996 or that she required surgery as a result of her employment-related condition. In an October 28, 1998 letter, appellant requested

¹ Appellant was working four hours daily at the time of the claimed recurrence of total disability.

reconsideration. In support of her request, she submitted an August 25, 1998 report, in which Dr. Hanson noted that appellant's job with the employing establishment required stooping, bending and working with file cabinets that were difficult to open. He opined that "these working conditions have caused [appellant's] back problems." In a January 7, 1999 decision, the Office denied appellant's reconsideration request, without reviewing the merits of the claim, on the grounds that appellant submitted insufficient evidence to warrant review of her claim.

The only decision before the Board on appeal is the January 7, 1999 Office decision, which denied appellant's request for a merit review of her claim. Since more than one year has elapsed between the issuance of the May 5, 1998 merit decision and August 4, 1999, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the May 5, 1998 decision.

Section 10.606(b)(2) 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 point of law, or (2) advancing a relevant legal argument not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office."² Section 10.608(b) provides that when an application for review of the merits of a claim, which does not meet at least one of these three requirements, the Office will deny the application for review without review of the merits of the claim.³

In her request for reconsideration, appellant submitted a new August 25, 1998 report from Dr. Hanson that noted certain of her employment duties and opined that appellant's employment conditions had caused her back problems. However, this report is not relevant because it does not specifically address the points at issue: Whether surgery was warranted due to appellant's employment-related condition and whether she had a recurrence of total disability beginning November 19, 1996 due to her employment injuries. The Board notes that it is not disputed that appellant has several accepted back conditions. Evidence or argument that does not address the relevant issue involved in the case does not constitute a basis for reopening a claim.⁴ Additionally, Dr. Hanson's August 25, 1998 report was essentially repetitive of his previously submitted reports noting that appellant's condition was employment related.⁵ Consequently, appellant did not submit any relevant new medical evidence to support her reconsideration request nor did she show that the Office erroneously applied or interpreted a point of law, or advance a relevant legal argument not previously considered by the Office.

² See 20 C.F.R. § 10.606(b)(2) (1999).

³ 20 C.F.R. § 10.608(b) (1999).

⁴ See *Ernest J. LeBreux*, 42 ECAB 736 (1991).

⁵ See *Eugene F. Butler*, 36 ECAB 393, 398 (1984) (where the Board held that material which is repetitious or duplicative of that already in the case record is of no evidentiary value in establishing a claim and does not constitute a basis for reopening a case).

As appellant's October 24, 1998 reconsideration request did not meet any of the three criteria of 20 C.F.R. § 10.606(b)(2), the Board finds that the Office properly denied appellant's reconsideration request without reviewing the merits of her claim.

The January 7, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 10, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member