

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUDOLPH MACK and U.S. POSTAL SERVICE,
INTERNATIONAL ANNEX, Jacksonville, FL

*Docket No. 01-711; Submitted on the Record;
Issued October 25, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

The Board has duly reviewed the case record and finds that the Office acted within its discretion in denying appellant's request for review.

The only decision before the Board in this appeal is that dated December 12, 2000 denying appellant's application for review. As more than one year elapsed between the date of the Office's most recent merit decision on November 16, 1999 and the filing of appellant's appeal on January 16, 2001 the Board lacks jurisdiction to review the merits of appellant's claim.¹

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 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 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.

On December 9, 1998 appellant, then a 50-year-old supervisor of distribution operations, filed an occupational disease claim alleging that he had developed a disabling back condition due to his employment duties, which included, at various times, pushing mail containers and lifting mail sacks. In a decision dated May 7, 1999, the Office denied appellant's claim for an

¹ 20 C.F.R. § 501.3(d)(2).

² 20 C.F.R. § 10.606(b).

employment-related back condition on the grounds that appellant had submitted insufficient medical evidence to establish that his diagnosed back condition was causally related to his employment.

By letter received July 6, 1999, appellant requested a review of the written record and submitted additional factual and medical evidence. In a decision dated November 16, 1999, an Office hearing representative affirmed the Office's prior decision, finding that the record did not contain a medical opinion from a physician who, on the basis of a complete and accurate medical and factual history, concluded that appellant's back condition was causally related to his employment duties.

By letter dated October 6, 2000, appellant requested reconsideration of the Office's November 16, 1999 decision and submitted additional evidence. In a decision dated December 12, 2000, the Office denied appellant's request on the grounds that he neither raised substantive legal questions nor included new and relevant evidence.

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.³

In support of his request for reconsideration, appellant submitted a September 28, 2000 prescription slip from a Dr. Lyerly, and the results of a computerized tomography scan and myelogram on September 22, 2000, which confirmed the presence of disc protrusions at L3-4 and L4-5.

It is not disputed that appellant has a severe back condition. However, the Office denied appellant's claim on the grounds that he failed to submit any rationalized medical evidence which explained the causal relationship, if any, between his employment duties and his diagnosed back condition. While the new medical evidence submitted by appellant confirms the presence of a back condition, the physicians interpreting the test results do not offer an opinion on whether appellant's employment caused or contributed to the diagnosed condition. Evidence which does not address the particular issue involved does not constitute a basis for reopening the claim.⁴ Therefore, these reports are insufficient to require the Office to reopen appellant's claim for a review of the merits.⁵

As appellant failed to raise substantive legal questions or to submit new relevant and pertinent evidence not previously reviewed by the Office, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

³ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁴ *Richard L. Ballard*, 44 ECAB 146, 150 (1992).

⁵ *Id.*

The decision of the Office of Workers' Compensation Programs December 12, 2000 is hereby affirmed.

Dated, Washington, DC
October 25, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member