

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN L. TESH and U.S. POSTAL SERVICE,
POST OFFICE, St. Paul, MN

*Docket No. 01-490; Submitted on the Record;
Issued September 24, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's medical benefits on the basis that appellant no longer had any residuals causally related to his January 13, 1998 employment injury; and (2) whether the Office abused its discretion by refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

On January 13, 1998 appellant, a 55-year-old clerk/timekeeper, sustained a back injury when he fell from an office chair. Appellant did not cease working as a result of his injury. He was, however, placed on limited duty. The Office accepted appellant's claim for low back strain.

By decision dated April 22, 1999, the Office terminated appellant's medical benefits on the basis that his work-related low back strain had ceased. Appellant subsequently requested a hearing, which was held on January 7, 2000. In a decision dated March 21, 2000, the Office hearing representative affirmed the prior termination of medical benefits.

On June 22, 2000 appellant filed a request for reconsideration and he submitted additional medical evidence. By decision dated September 6, 2000, the Office denied appellant's request for reconsideration without addressing the merits of his claim.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office dated March 21, 2000 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.¹

The Board further finds, with respect to the Office's September 6, 2000 decision denying reconsideration, that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.² Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2) of the Federal Employees' Compensation Act, the Office will deny the application for reconsideration without reopening the case for a review on the merits.³

Appellant's June 22, 2000 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2). With respect to the third requirement, constituting relevant and pertinent new evidence not previously considered by the Office, appellant submitted a May 15, 2000 report from his treating physician, Dr. Richard W. Schoewe, a Board-certified family practitioner, who described appellant's ongoing back problems. However, other than noting that appellant's preexisting spinal problems made him more vulnerable to the type of injury he sustained on January 13, 1998, Dr. Schoewe did not explain how appellant's current symptoms were related to his accepted employment injury as opposed to appellant's preexisting degenerative disc disease. Inasmuch as Dr. Schoewe did not specifically address the relevant issue on reconsideration, his opinion is insufficient to warrant

¹ Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits. *Curtis Hall*, 45 ECAB 316 (1994). The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981). To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment. *Calvin S. Mays*, 39 ECAB 993 (1988). The Board finds that the Office met its burden of proof in terminating appellant's medical benefits based on the accurate, thorough and well-rationalized opinion of Dr. Robert H.N. Fielden, a Board-certified orthopedic surgeon and Office referral physician, who determined that appellant's ongoing complaints were due to underlying preexisting problems, degenerative changes and appellant's excessive weight. See *Gary R. Sieber*, 46 ECAB 215, 224 (1994).

² 20 C.F.R. § 10.606(b)(2) (1999).

³ 20 C.F.R. § 10.608(b) (1999).

reopening the claim for merit review.⁴ Consequently, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying appellant's June 22, 2000 request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated September 6 and March 21, 2000 are hereby affirmed.

Dated, Washington, DC
September 24, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁴ *Paul Kovash*, 49 ECAB 350, 354 (1998).