

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PETER INFANTE and U.S. POSTAL SERVICE,
POST OFFICE, Aguada, PR

*Docket No. 02-27; Submitted on the Record;
Issued April 23, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

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

On October 7, 1998 appellant, a 60-year-old modified distribution clerk, filed a notice of traumatic injury alleging that on October 5, 1998 he injured his left shoulder, upper back and leg while lifting in the performance of duty. The Office denied appellant's claim by decision dated July 23, 1999. Appellant requested an oral hearing on August 20, 1999. By decision dated June 12, 2000, the hearing representative denied appellant's claim finding that he failed to submit sufficient medical evidence to establish that he sustained a low back or shoulder condition causally related to the employment incident.¹

Appellant requested reconsideration on September 7 and June 8, 2000² and submitted additional evidence and argument. By decision dated June 21, 2001, the Office denied appellant's request for review of the merits of his claim on the grounds that the evidence submitted was immaterial or illegible and that the arguments were not sufficient to require merit review.

The Board finds that the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits.

The Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law, advances a relevant legal

¹ As this decision was issued more than one year prior to appellant's appeal to the Board on September 19, 2001, the Board may not consider the merits of appellant's claim. 20 C.F.R. § 501.3(d)(2).

² The Office did not receive this request until June 13, 2001.

argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.³

In this case, the hearing representative specifically denied appellant's claim for a lack of contemporaneous medical evidence addressing the causal relationship between appellant's accepted lifting incident and his diagnosed shoulder and back conditions. In support of his request for reconsideration, appellant submitted a report from Dr. Echevania Santiago, a Board-certified surgeon, dated October 6, 1998, the day following appellant's employment incident. Dr. Santiago's report noted, "After trauma on his job comes due to pop in arm and back." He diagnosed left hematoma on the left shoulder and severe low back pain.

This report clearly constitutes relevant, new evidence not previously considered by the Office.⁴ The report related directly to the reason for which the hearing representative denied appellant's claim. On remand, the Office should conduct a merit review of appellant's claim and pursue any additional development of the medical evidence necessary.

The June 21, 2001 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this opinion of the Board.

Dated, Washington, DC
April 23, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

³ 5 U.S.C. §§ 10.609(a) and 10.606(b).

⁴ The requirement for reopening a claim for merit review does not require a claimant to submit all evidence which maybe necessary to discharge his or her burden of proof. *See Joseph L. Cabral*, 44 ECAB 152 (1992).