

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA J. CANOLES and U.S. POSTAL SERVICE,
POST OFFICE, Birmingham, AL

*Docket No. 01-2057; Submitted on the Record;
Issued August 7, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

The Office accepted that appellant sustained a back strain and bilateral knee strains in the performance of duty on February 7, 1994. On October 10, 1995 appellant began work as a modified distribution clerk four hours per day. In a decision dated December 5, 1995, the Office determined that appellant's part-time, limited-duty position fairly and reasonably represented her wage-earning capacity. Appellant ceased working on December 18, 1995 and filed a claim for compensation.

In a decision dated June 1, 1998, the Office denied appellant's claim for total disability on or after December 18, 1995.¹ Appellant requested an oral hearing, which was held on April 13, 1999. By decision dated June 16, 1999, the Office hearing representative affirmed the June 1, 1998 decision.

Appellant requested reconsideration on June 15, 2000 and she submitted additional medical evidence. By decision dated July 6, 2000, the Office denied modification of the June 16, 1999 decision.

On July 5, 2001 appellant requested reconsideration. In a decision dated July 26, 2001, the Office denied appellant's request without reaching the merits of her claim.

The Board finds that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

¹ The Office initially denied the claim by decision dated January 29, 1997. However, in a decision dated September 19, 1997, the Office hearing representative remanded the case for further development.

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) submitting 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), the Office will deny the application for reconsideration without reopening the case for a review on the merits.³

Appellant's July 5, 2001 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 her claim based on the first and second above-noted requirements under section 10.606(b)(2). With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant did not submit any new evidence but merely resubmitted an April 1, 1996 report from Dr. Dewey H. Jones, III. Evidence that is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening the claim.⁴ Consequently, appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of her 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 July 5, 2001 request for reconsideration.

² 20 C.F.R. § 10.606(b)(2) (1999).

³ 20 C.F.R. § 10.608(b) (1999).

⁴ *James A. England*, 47 ECAB 115, 119 (1995); *Sandra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

The July 26, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 7, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member