

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RUTHIE M. GOODMAN and U.S. POSTAL SERVICE,  
NATIONAL CAPITAL STATION, Washington, DC

*Docket No. 00-2525; Oral Argument Held November 13, 2002;  
Issued December 31, 2002*

Appearances: *Jay Kennedy, Esq.*, for appellant; *Paul J. Klingenberg, Esq.*,  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for a further review of the merits of her claim under 5 U.S.C. § 8128(a) in its February 7, 2000 decision; and (2) whether the Office abused its discretion in refusing to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a) in its May 25, 2000 decision.

On June 26, 1987 appellant, then a 34-year-old mail carrier, filed a traumatic injury claim alleging that on June 22, 1987 she was bitten on her left hand and left leg by a dog while she was putting mail into a mailbox.

In an August 11, 1987 letter, the Office accepted appellant's claim for a dog bite on the left third finger and on the left leg. The Office authorized surgery on her left leg, which was performed on September 25, 1990. Appellant received appropriate disability compensation.

On May 11, 1989 appellant filed a claim alleging that she sustained a recurrence of disability on April 19, 1989. By letter dated August 28, 1989, the Office accepted appellant's recurrence claim.

On February 27, 1992 appellant filed a claim for a schedule award. By decision dated August 23, 1993, the Office granted her a schedule award for a 32 percent permanent impairment of the left lower extremity.

On November 16, 1994 appellant filed a claim for compensation on account of traumatic injury or occupational disease covering the period July 6 through December 14, 1994.<sup>1</sup> By decision dated May 5, 1998, the Office denied her claim. In a May 15, 1998 letter, appellant requested an oral hearing before an Office representative.<sup>2</sup>

The hearing representative affirmed the Office's decision, in a May 3, 1999 decision. In a January 7, 2000 letter, appellant requested reconsideration. She explained that the delay in requesting reconsideration was due to stress she experienced resulting from the Office's denial of her claim. Appellant stated that relevant evidence and medical reports were forthcoming.

By decision dated February 7, 2000, the Office denied appellant's request for a merit review of her claim on the grounds that it neither raised substantive legal questions nor included new and relevant evidence and thus, it was insufficient to warrant a review of the hearing representative's prior decision.

Subsequently, on March 13, 2000, the Office received a November 7, 1999 letter written by appellant to her congressional representative seeking assistance with the denial of her claim.

The Office also received a March 31, 2000 report from Dr. Robert E. Collins, a Board-certified orthopedic surgeon, providing a history of appellant's June 22, 1987 employment injury and medical background. Dr. Collins noted his findings on physical examination and appellant's complaint of ongoing pain in her legs, thighs, knees, ankles and feet. He stated that he could not find any reason why appellant should not be able to return to a sedentary and light-duty job.

In addition, the Office received Dr. Collins' April 14, 2000 treatment notes revealing a history of appellant's pain, aching and swelling in her legs, feet and knees, his findings on physical examination and appellant's future medical treatment.

In an April 6, 2000 letter, appellant requested reconsideration of the Office's February 7, 2000 decision. She contended that she was assigned limited-duty work on the day shift after receiving a schedule award for a 35 percent permanent impairment of her left lower extremity. Appellant stated that the employing establishment reassigned her to a clerk operator position located at another facility, which required her to work from 10:30 p.m. until 7:00 a.m. She contended that the employing establishment never furnished her with a written description of the specific duties and physical requirements of the new limited-duty position. Appellant also contended that the Office ignored her requests for pain management therapy. Finally, she contended that the Office failed to properly weigh the medical evidence of record. Appellant's request was accompanied by provisions of the federal regulations regarding workers' compensation and by provisions from her employing establishment contract.

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<sup>1</sup> The record indicates that appellant stopped work on July 6, 1994 due to her June 22, 1987 employment injury.

<sup>2</sup> In a June 11, 1998 decision, the Office denied appellant's claim alleging that she sustained an injury to her right foot due to her June 22, 1987 employment injury.

By decision dated May 25, 2000, the Office again denied appellant's request for a merit review of her claim on the grounds that it neither raised substantive legal questions nor included new and relevant evidence.<sup>3</sup>

The Board finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a) in its February 7, 2000 decision.

To require the Office to reopen a case for a merit review under section 8128 of the Federal Employees' Compensation Act,<sup>4</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.<sup>5</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>6</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for a review of the merits.<sup>7</sup>

In her January 7, 2000 letter requesting reconsideration, appellant failed to show that the Office erroneously applied or interpreted a point of law or fact not previously considered by the Office; neither did she advance a point of law not previously considered by the Office. Appellant merely requested reconsideration of the hearing representative's May 3, 1999 decision and explained the delay in filing her request. The issue in this case, whether appellant established that she was disabled from work during the period July 6 through December 14, 1996 due to her June 22, 1987 employment injury, is medical in nature. Although she indicated that relevant medical evidence would be forthcoming, she did not submit any relevant and pertinent new evidence not previously considered by the Office prior to the Office's February 7, 2000 decision. In addition, appellant did not advance a relevant legal argument that had not been previously considered by the Office. Therefore, the Office properly denied her request for reconsideration.

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a) in its May 25, 2000 decision.

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<sup>3</sup> The Board notes that, subsequent to the Office's May 25, 2000 decision, the Office received additional medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. See *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).

<sup>4</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>6</sup> *Id.* at § 10.607(a).

<sup>7</sup> *Id.* at § 10.608(b).

In her April 6, 2000 request for reconsideration, appellant argued that the employing establishment changed her job and work hours. This argument, however, is not relevant to the critical issue in this case, whether appellant was disabled from work during the period July 6 through December 14, 1996 due to her June 22, 1987 employment injury. Further, the federal regulation and employment contract provisions submitted by appellant are irrelevant. Evidence that does not address the particular issue involved is irrelevant and also constitutes no basis for reopening a case.<sup>8</sup>

Similarly, the March 31, 2000 report and April 14, 2000 treatment notes of Dr. Collins, a Board-certified orthopedic surgeon, failed to address whether appellant was disabled for work during the period July 6 through December 14, 1996 due to her June 22, 1987 employment injury. As evidence that does not address the particular issue involved is irrelevant and as it also constitutes no basis for reopening a case, Dr. Collins' report and treatment notes are irrelevant to the issue in question and are insufficient to warrant a reopening of appellant's case for further review on its merits.

Inasmuch as appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a relevant argument not previously considered by the Office or to submit relevant and pertinent new evidence not previously considered by the Office, the Office properly refused to reopen appellant's claim for a review on the merits in its May 25, 2000 decision.

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<sup>8</sup> *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

The May 25 and February 7, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
December 31, 2002

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member