U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of DAISY RUIZ and U.S. POSTAL SERVICE,
POST OFFICE, Miami, FL

*Docket No. 00-1733; Submitted on the Record;*
*Issued January 23, 2002*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

On April 11, 1988 appellant, then a 38-year-old mail clerk, sustained injuries to her back and ribs when she fell off a chair between a trashcan and a conveyor belt. The Office accepted the claim for cervical and lumbar strains and contusion, left ribs. Appellant's claim was also accepted for temporary aggravation of depression. She was totally disabled from April 12 through June 29, 1988. Appellant worked intermittently until November 18, 1988 and subsequently received compensation for temporary total disability.[1]

Appellant was referred for a second opinion examination on January 31, 1997 with Dr. Jorge Bonilla-Colon, a Board-certified orthopedic surgeon. In his report, Dr. Bonilla-Colon diagnosed old cervical and lumbar strains; traumatic and degenerative intervertebral C6, C7 disc disease and herniated nucleus pulposus C6-7 were not ruled out. He opined that use of a collar and intermittent work hardening exercises with supervision might help appellant return to gainful employment. Dr. Bonilla-Colon later agreed that appellant could return to work four hours a day with restrictions.

On March 13, 1997 appellant was referred for second opinion examination with Dr. Luis Toro, a psychiatrist. In his March 25, 1997 report, Dr. Toro indicated that appellant could return to work four hours a day with restrictions.

By letter dated March 28, 1998, the employing establishment submitted a proposed job offer to appellant based upon the medical restrictions of Drs. Bonilla-Colon and Toro.

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[1] On September 9, 1990 appellant relocated to Puerto Rico, alleging financial problems and a desire to be close to her family so they could help her with her needs.

By letter dated April 14, 1998, the employing establishment informed the Office that appellant had accepted the job offer with stipulations.

On April 24, 1998 the Office informed appellant that it found the proposed position suitable and informed her of the penalty provision of 5 U.S.C. § 8106(c). The Office allowed appellant 30 days to provide an explanation if she refused the offer.

By letter dated May 13, 1998, appellant requested that her case be "reconsidered."[2] In her request, she stated that the report from Dr. Toro, the second opinion physician, was not accurate. She also enclosed a copy of a May 12, 1998 report from Dr. Elias R. Jimenez Olivo, her psychiatrist, indicating that she was totally and permanently disabled and unable to participate in any substantially gainful occupation. Appellant also requested relocation expenses.

By letter dated May 28, 1998, the Office advised appellant that she had 15 days to accept the job and report to work when scheduled. The Office advised her that the May 12, 1998 report was insufficient as it did not contain medical rationale.

In a June 15, 1998 decision, the Office denied appellant's claim for continued compensation because she did not return to work, provide an unconditional acceptance of the job offered, or offer a valid reason for her refusal.

By letter dated July 6, 1998, appellant requested an oral hearing, which was held on November 24, 1998. At the hearing, appellant and her representative discussed the circumstances regarding her injury, her willingness to return to work and arrangements regarding the possibility of her returning to Miami to work, at the Arecibo Post Office in Puerto Rico and a possible job offer there instead of in Miami.

By letter dated December 31, 1998, the employing establishment requested that compensation be terminated.

By decision dated January 14, 1999, the hearing representative affirmed the June 15, 1998 decision.

By letter dated January 10, 2000, appellant, through her representative, requested reconsideration. In his request, appellant's representative reiterated that appellant moved to Puerto Rico to be close to her family for support and assistance. He stated that appellant's job offer should have been extended where she currently resided in Puerto Rico instead of Miami. Appellant's representative referred to the Federal Register Volume 63, No. 227, section 10.508 and noted that suitable reemployment should be offered by the employer where the employee currently resides when the distance is at least 50 miles. He further stated that appellant was offered a Code 69 position in the Arecibo office, however, it required approval from the Miami Postmaster, which never occurred. Appellant's representative referred to a Special Postal Bulletin dated August 2, 1990, page 36, 21768A, statement #546.143 titled "[r]elocation [c]onsideration" which indicated: "[W]hen a former employee now partially recovered is

[2] The Office informed appellant that a final decision had not been made. Therefore, reconsideration was not an option at this time.

receiving OWCP compensation and is being considered for reemployment, but has permanently relocated to a new geographic area since the time of his or her compensable injury, every effort must be made to reemploy the individual at a postal facility within the area of his or her present place of residence. Any offer to reemploy in a different location can be considered only after all reasonable attempts have been made to rehire within the area of employee's present place of residence." Additionally, he stated that appellant eventually accepted the position in Florida, requested additional time within which to comply, was granted an extension and reported to work on November 30, 1998. The representative stated further that appellant's condition worsened while in Florida and she subsequently returned to Puerto Rico due to her aggravated condition.

Appellant also provided duplicate copies of letters from the Office, which were of record dated June 18, July 28, 1998 and January 14, 1999. She also enclosed a copy of her October 15, 1998 letter requesting a job in Puerto Rico, which was also previously of record.

Appellant also supplied numerous diagnostic reports and medical reports from April 26 to October 8, 1999.

By decision dated January 24, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was found to be of a cumulative nature and was not sufficient to warrant a review of its prior decision.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.[3] As appellant filed her appeal with the Board on April 28, 2000, the Board lacks jurisdiction to review the Office's most recent merit decision dated January 14, 1999. Consequently, the only decision properly before the Board is the Office's January 24, 2000 decision denying appellant's request for reconsideration.

The Board finds that the Office properly denied merit review of appellant's request for reconsideration.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application. The Secretary in accordance with the facts found on review may --
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> (1) end, decrease, or increase the compensation awarded; or
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> (2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2) (1999), a claimant may obtain review of the merits of the claim by submitting evidence and argument: (1) showing that the Office erroneously applied or

[3] 20 C.F.R. § 10.607(a) (1999).

interpreted a specific point of law; or (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. Section 10.608(b) (1999) provides that where the request is timely but fails to meet at least one of the standards described in section 10.606(b)(2) (1999) or where the request is untimely and fails to present any clear evidence of error, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[4]

In this case, appellant did not submit any new and relevant evidence on the issues involving her refusal of suitable work on March 28, 1998.

Her representative submitted that appellant moved to be close to her family, that a job offer should have been extended in Puerto Rico and that appellant was in the process of making arrangements. However, these arguments were previously considered by the Office and therefore were not new and relevant.

Additionally, her representative referred to the Federal Register and a postal bulletin regarding reemployment. However, the record reflects that the hearing representative addressed these issues and explained that appellant was still on the employing establishment rolls at the time of the job offer and these rules would not apply. Therefore, these contentions have no reasonable color of validity.[5]

Appellant also submitted numerous medical reports and diagnostic test results dating from April 26 to October 8, 1999. However, none of these documents discussed the offered position on March 28, 1998 and appellant's ability to return to work. In fact, all of these reports described appellant's treatment months after the job offer was made. None of the notes or reports discussed suitability of the job offered to appellant nor did they explain the period of total disability. The underlying issue is whether appellant was capable of performing the duties of the offered position as of March 28, 1998 and appellant has not provided any new or relevant information on this issue.

The Board finds that appellant did not submit new and relevant evidence or show that the Office erroneously applied or interpreted a specific point of law, nor did she advance a new and relevant legal argument. Accordingly, the Board finds that she did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2), and therefore, the Office properly denied the requests for reconsideration without merit review of the claim.

[4] 20 C.F.R. § 10.608(b) (1999).

[5] *See John F. Critz*, 44 ECAB 788 (1993) (reopening of a claim not required where a legal contention does not have a reasonable color of validity).

The January 24, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 23, 2002

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member