

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGARET L. THOMPSON and U.S. POSTAL SERVICE,
MORGAN GENERAL MAIL FACILITY, New York, NY

*Docket No. 01-443; Submitted on the Record;
Issued January 11, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for merit review.

On March 24, 1993 appellant, then a 40-year-old mailhandler, sustained an injury to her back, while in the performance of duty. The Office accepted the claim for cervical sprain and subluxation at T5-6 and appellant received appropriate wage-loss compensation. Additionally, the Office accepted that appellant sustained recurrences of total disability on July 20, 1993, February 7, 1994, April 22 and August 28, 1995. Following her August 1995 recurrence of disability, appellant returned to work in a part-time limited-duty capacity, working six hours per day. On May 20, 1997 appellant filed another claim for recurrence of disability beginning January 2, 1997.

After further development of the record, the Office denied appellant's claim for recurrence of total disability in a decision dated October 8, 1998. The Office also found that appellant no longer suffered any continuing disability or residuals of her March 24, 1993 employment injury.¹ Appellant subsequently requested an oral hearing, which was held April 19, 1999. On July 13, 1999 the Office hearing representative affirmed the prior decision dated October 10, 1998. On May 30, 2000 appellant filed a request for reconsideration accompanied by additional evidence. By decision dated August 24, 2000, the Office denied appellant's request for reconsideration without addressing 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 accorded determinative weight to the July 10, 1998 opinion of Dr. Barry S. Gloger, a Board-certified orthopedic surgeon and impartial medical examiner. Dr. Gloger diagnosed mild degenerative spinal disease and malingering. He explained that appellant had no objective evidence of disability and that the mild degenerative changes in her spine were consistent with her age. Dr. Gloger concluded that appellant was fit for full duty as a mailhandler.

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 May 30, 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 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 submitted, among other items, an August 25, 1999 notice of decision from the Social Security Administration (SSA) awarding disability benefits effective January 2, 1997. The Office correctly advised appellant that the SSA disability finding was not determinative with respect to entitlement under the Federal Employees' Compensation Act.⁴ Appellant also submitted statements dated May 30, 2000 from her mother, Sarah Harley and her daughter, Nicole Harley-Patterson. The statements generally attest to the physical, emotional, legal and financial challenges appellant has faced as a consequence of her employment injury. As the issue on reconsideration is of a medical nature, the statements of laypersons are not probative.⁵

The medical evidence submitted on reconsideration includes a September 17, 1999 nerve conduction study (NCS) of the upper and lower extremities. Dr. B. Ashraf interpreted the upper extremity study as normal, but noted certain abnormalities with respect to the lower extremity NCS. Additionally, appellant submitted a June 1, 2000 unsigned letter from her chiropractor, Dr. Katharine Mann. Attached to her letter is a document titled "Progression of Condition" that provides a chronology of appellant's various subjective complaints during the period June 5, 1998 to May 17, 2000. The above-noted medical evidence provides no correlation between appellant's abnormal objective studies, her ongoing subjective complaints of pain and her March 1993 employment injury. Neither Drs. Mann nor Ashraf addressed the issue of causal relationship. As such, the medical evidence submitted is not relevant to the issue on

² 20 C.F.R. § 10.606(b)(2) (1999).

³ 20 C.F.R. § 10.608(b) (1999).

⁴ See *Daniel Deparini*, 44 ECAB 657, 659-60 (1993).

⁵ Appellant has the burden of proving that she is disabled for work as a result of an employment injury or condition. This burden includes the necessity of submitting medical opinion evidence, based upon a proper factual and medical background, establishing such disability and its relationship to the employment. *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

reconsideration.⁶ 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 May 30, 2000 request for reconsideration.

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

Dated, Washington, DC
January 11, 2002

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁶ Evidence that does not address the particular issue involved does not constitute a basis for reopening the claim. *Richard L. Ballard*, 44 ECAB 146, 150 (1992).