

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES I. POWELL and DEPARTMENT OF THE NAVY,  
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 01-1863; Submitted on the Record;  
Issued July 25, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for reconsideration.

This case is on appeal before the Board for the second time. By decision dated April 18, 2000, the Board affirmed the Office's November 5, 1997 decision, in which it found that the selected position of information clerk fairly and reasonably represented appellant's wage-earning capacity.<sup>1</sup>

Appellant requested reconsideration on December 6, 2000 and submitted additional evidence. In a decision dated March 2, 2001, the Office denied appellant's request without reaching the merits of his 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.

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.<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup> Docket No. 98-512. The Board's April 18, 2000 decision is incorporated herein by reference.

<sup>2</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>3</sup> 20 C.F.R. § 10.608(b) (1999).

Appellant's December 6, 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 his claim based on the first and second above-noted requirements under section 10.606(b)(2).

Appellant submitted a May 6, 1999 report from his treating physician, Dr. Ronald F. Asper, a Board-certified internist. In his most recent report, Dr. Asper indicated that appellant remained permanently disabled due to traumatic peripheral neuropathy of his right foot. He further noted that appellant developed renal dysfunction related to his long-standing hypertension. Dr. Asper explained that appellant's renal failure exacerbated the symptoms associated with his neuropathy; thus, making it even more difficult for appellant to ambulate. He stated that it would be impossible for appellant to do any useful work activities because of the dangers in falling and self-injury while attempting to ambulate. Dr. Asper noted that appellant was "basically restricted ... to periods of sitting *only* ... because of the sharp discomfort that he suffers when he puts weight on his foot." (Emphasis in the original.) The May 6, 1999 report is repetitious of Dr. Asper's earlier reports regarding the cause and extent of appellant's condition. His prior reports represented one side of a conflict in medical opinion, which the Office properly resolved by referring appellant to an impartial medical examiner who ultimately disagreed with Dr. Asper's opinion. As the May 6, 1999 report is cumulative in nature, it is insufficient to justify merit review of the instant claim.<sup>4</sup> Consequently, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of his 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 December 6, 2000 request for reconsideration.

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

The March 2, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
July 25, 2002

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member