

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIA E. SOSA-LOPEZ and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

*Docket No. 01-2072; Submitted on the Record;
Issued June 11, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has established a recurrence of disability in September 1997 or November 1999; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

On February 17, 1989 appellant, then a 39-year-old mail processor, filed a claim alleging that she sustained tendinitis causally related to repetitive work activity as a mail processor. The Office accepted the claim for right shoulder strain and left carpal tunnel syndrome.¹ Appellant returned to work intermittently in a part-time light-duty position. She stopped working in November 1995 and returned to a light-duty position at four hours per day on July 1, 1996. The record indicates that in August 1997 appellant filed a claim for a new injury and stopped working. That claim is not before the Board on this appeal. She returned to work in June 1998, and then again stopped working in 1999.²

On September 27, 1999 appellant filed a notice of recurrence of disability. She indicated that the date of the original injury was December 26, 1988 and the date of the recurrence of disability was September 1997. On November 4, 1999 appellant filed another notice of recurrence of disability; on this form the date of the original injury is November 1997, and the date of recurrence of disability is listed as November 1, with no year provided.

By decision dated February 15, 2000, the Office denied the claims for recurrences of disability. In a decision dated October 2, 2000, an Office hearing representative affirmed the prior decision. By decision dated May 18, 2001, the Office found that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

¹ The Office also authorized left thumb surgery.

² The record does not contain a complete documentation of appellant's work stoppages.

The Board finds that appellant has not established a recurrence of disability in September 1997 or November 1999.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.³

With respect to the period September 1997 to June 1998, the Board finds that the medical evidence is insufficient to establish a recurrence of total disability. In a report dated November 18, 1997, Dr. Fred Blackwell, an orthopedic surgeon, diagnosed status post bilateral volar carpal ligament release, status post left thumb excisional arthroplasty, pain right thenar mass, etiology undetermined, probable repetitive strain injury and functional overlay. Dr. Blackwell indicated that appellant was on an extended leave of absence and she “asked that I cover her for disability. I indicated that this was not possible.... She should return to work as I had previously declared her capable of doing.” The Board finds no probative medical evidence establishing that appellant’s employment-related condition worsened as of September 1997 and caused disability for the light-duty job.

With respect to November 1999, the Form CA-2a did not clearly explain the nature of the claim. The injury date is reported as November 1997, and the date of the claimed recurrence of disability appears to be November 1, 1999. At the July 19, 2000 hearing, appellant indicated that she actually stopped working on November 26, 1999. In any case, there is no medical evidence establishing disability as of that date causally related to the accepted employment injuries. In a report dated January 4, 2000, Dr. Blackwell indicated that appellant complained of left arm problems related to overuse because of a nonindustrial right hand condition. Dr. Blackwell noted that appellant had not worked since November 26, 1999 and apparently was scheduled for right hand surgery on January 18, 2000. Dr. Blackwell does not offer an opinion supporting causal relationship between disability and the accepted employment injuries in this case. Accordingly, the Board finds that appellant did not meet her burden of proof to establish a recurrence of disability.

The Board further finds that the Office properly denied appellant’s request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act,⁴ the Office’s regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously

³ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ 5 U.S.C. § 8128(a) (providing that “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application”).

considered by the Office.⁵ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁶

In the present case, appellant requested reconsideration in a letter dated March 31, 2001; she submitted a September 23, 1991 and a 1992 note from Dr. John Warbritton, an orthopedic surgeon. These reports had previously been submitted and do not constitute new evidence. Appellant also submitted a June 29, 1992 form report from an employing establishment physician, noting right hand carpal tunnel surgery and indicating appellant could return to work with limitations. The report does not address issues raised in a claim for a recurrence of disability in September 1997 or November 1999 and is not new and relevant medical evidence. The Board finds that appellant did not meet any of the requirements of section 10.606(b)(2), and therefore the Office properly denied merit review of the claim.

The decisions of the Office of Workers' Compensation Programs dated May 18, 2001 and October 2, 2000 are affirmed.

Dated, Washington, DC
June 11, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ 20 C.F.R. § 10.608(b); *see also* Norman W. Hanson, 45 ECAB 430 (1994).