

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FLORA L. NELSON and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Gary, IN

Docket No. 02-119; Submitted on the Record;
Issued June 7, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
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 April 25, 2000 appellant, a 44-year-old mailhandler, filed an occupational disease claim alleging that she sustained carpal tunnel syndrome as a result of her federal employment. Appellant identified April 19, 2000 as the date she first realized that her condition was employment related. She ceased working on April 20, 2000 and returned to work April 25, 2000.

The Office denied appellant's claim in a decision dated July 15, 2000. The Office explained that appellant failed to establish a causal relationship between her claimed condition and her employment.

On June 25, 2001 appellant requested reconsideration and submitted additional medical evidence. By decision dated August 20, 2001, the Office denied appellant's request for reconsideration. The Office found the evidence to be cumulative and repetitive and further noted that no new substantial evidence or medical reasoning had been provided to alter the prior decision.

The Board finds that the Office abused 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.¹ 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.²

In addressing the evidence submitted on reconsideration, the Office noted that duty status reports dated May 24 and 25 and June 15, 2001 had already been submitted and previously considered. Consequently, the Office found the evidence to be cumulative in nature. Given the fact that the Office's prior decision was issued July 15, 2000, it is clear that the Office did not previously consider the above-noted duty status reports prepared some 10 months after the Office's decision. Additionally, the Office neglected to consider a June 19, 2001 report from Dr. Joseph H. Cummings wherein he characterized appellant's condition was a "work-related injury." Furthermore, while appellant's December 28, 2000 treatment records from the Methodist hospital may not contain sufficient rationale to discharge appellant's burden, the lack of sufficient rationale is not a proper basis for denying merit review.

The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence necessary to discharge her burden of proof. If the Office should determine that the new evidence submitted lacks substantive probative value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.³ Section 10.606(b) only specifies that the evidence be relevant and pertinent and not previously considered by the Office.⁴ Accordingly, the Board finds that the Office abused its discretion in denying appellant's June 25, 2001 request for reconsideration.

¹ 20 C.F.R. § 10.606(b)(2) (1999).

² 20 C.F.R. § 10.608(b) (1999).

³ *Paul Kovash*, 49 ECAB 350, 354 (1998).

⁴ 20 C.F.R. § 10.606(b)(2)(ii).

The August 20, 2001 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for a merit review.

Dated, Washington, DC
June 7, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member