

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EMILY MONTANEZ and U.S. POSTAL SERVICE,
AIRMAIL FACILITY, JOHN F. KENNEDY INTERNATIONAL
AIRPORT, Jamaica, NY

*Docket No. 02-503; Submitted on the Record;
Issued June 20, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On March 27, 1999 appellant, then a 49-year-old mailhandler, was struck by a jitney, sustaining pain in her back and right shoulder. She stopped working that day. The Office accepted appellant's claim for multiple contusions. Appellant returned to limited duty, six hours a day, on May 1, 1999. She received continuation of pay for the period March 28 to May 11, 1999. She stopped again on May 25, 1999. The Office began payment of temporary total disability compensation effective June 5, 1999. The Office subsequently accepted appellant's claim for cervical radiculopathy, left hand sprain, left lateral epicondylitis and pain in the right shoulder and low back. Appellant returned to work, four hours a day, on October 4, 1999.

The employing establishment offered appellant a full-time limited-duty position, which she accepted. She returned to work on April 8, 2000, claimed a recurrence of disability for April 9, 2000 and returned to work on April 10, 2000. She stopped working again on April 11, 2000 and did not return thereafter.

In a July 19, 2000 decision, the Office denied appellant's claim for a recurrence of disability on the grounds that the evidence of record did not establish a change in the nature or extent of her employment-related injury or in the nature and extent of her light work duty.

In a June 21, 2001 letter, appellant's attorney requested reconsideration. In an August 29, 2001 decision, the Office denied appellant's request for reconsideration on the grounds that no competent medical evidence was submitted in support of the request and the legal arguments presented in support of the request for reconsideration had no legal color of validity.

The Board finds that the Office properly denied 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, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advanced a point of law not previously considered by the Office, or submitted relevant and pertinent evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.¹ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.² Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.³ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁴

Appellant's attorney argued that appellant had a lesser burden of proof in attempting to establish a recurrence of disability. He stated that, according to the Office's procedure manual, appellant only had to establish disability rather than causal relationship if she had a recurrence of disability within 90 days after her first return to work. The procedure manual provides that where a recurring disability for work is claimed within 90 days or less from the first return to work, the focus is one disability rather than causal relationship.⁵ However, in this case, appellant first returned to work on May 1, 1999. As her recurrence of disability on April 11, 2000 was not within 90 days of her first return to work, she must establish causal relationship between her employment injury and her recurrence of disability.

Appellant's attorney stated that, as appellant was on limited duty at the time of the recurrence of disability, she had a lesser burden of proof. The Office's procedures provide that a claimant who is performing light duty or has a loss of wage-earning capacity rating is not considered fully recovered from his or her work-related injury. Therefore, the claimant's burden of proof is to establish that any increase in disability for work is due to the accepted injury rather than some other cause.⁶ However, the medical evidence submitted in the request for reconsideration is insufficient to meet this burden of proof. Appellant submitted several medical reports that had been submitted previously to the Office, including a July 1, 1999 report from Dr. James Higgins, an osteopath, and a May 15, 2000 form report from Dr. Benjamin Bieber, a Board-certified physiatrist. As these reports are duplicative of reports previously submitted, they are insufficient to warrant further review of appellant's claim. Appellant also submitted a

¹ 20 C.F.R. § 10.608(b).

² *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

³ *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

⁴ 20 C.F.R. § 10.608(b).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6(a) (January 1995).

⁶ *Id.*, Chapter 2.1500.7(a)(1).

May 15, 2000 report from Dr. Bieber, in which he described appellant's employment injury and diagnosed cervical and lumbar strains. However, he gave no opinion on whether the diagnosed conditions were related to the employment injury or caused a recurrence of disability after April 11, 2000. A June 12, 2000 report from Dr. Anjur R. Ramchandran, a Board-certified radiologist, stated that a magnetic resonance imaging scan of the cervical spine was normal. Neither of these reports addresses the issue in this case, whether appellant had an employment-related recurrence of total disability effective April 11, 2000. Appellant, therefore, has not submitted any new, relevant medical evidence that would require a merit review of appellant's case. The legal arguments submitted by her attorney, while accurate in citing the procedure manual, have no legal color of validity⁷ because the sections of the procedure manual cited do not apply to the facts in this case.

The decision of the Office of Workers' Compensation Programs, dated August 29, 2001, is hereby affirmed.

Dated, Washington, DC
June 20, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Constance G. Mills*, 40 ECAB 317 (1988).