

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALISA B. LEE and U.S. POSTAL SERVICE,
COMPUTER FORWARDING OPERATION, Chicago, IL

*Docket No. 02-512; Submitted on the Record;
Issued June 24, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on September 24, 2001.

Appellant, a 39-year-old mark-up clerk, filed a notice of traumatic injury on April 27, 1999 alleging that she developed back and leg pain in the performance of duty. The Office denied appellant's claim by decision dated July 19, 1999. Appellant requested an oral hearing on August 18, 1999. By decision dated May 10, 2000, the hearing representative affirmed the July 19, 1999 denial. Appellant requested reconsideration through her representative on May 10, 2001. By decision dated August 24, 2001, the Office denied appellant's request for review of the merits of her claim.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits on August 24, 2001.

The Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law, advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.¹

In support of appellant's request for reconsideration, her representative disagreed with the Office's finding that the medical evidence was not sufficient to establish a causal relationship between appellant's diagnosed condition and her alleged employment incident. Appellant's representative argued that, because appellant's work incident of a trip was clearly competent to cause her diagnosed condition of back strain, no further rationale was needed and that the

¹ 5 U.S.C. §§ 10.609(a) and 10.606(b).

medical evidence of record was sufficient. He further argued that appellant's claim could not be denied without the exercise of an affirmative defense on the part of the Office as appellant was in the performance of duty at the time her injury occurred.

The Board finds that these arguments are not sufficient to require the Office to reopen appellant's claim for consideration of the merits as the arguments neither show that the Office erroneously applied or interpreted a specific point of law; nor advance a relevant legal argument not previously considered by the Office. Appellant's representative's second argument ignores the basic element of the Board's rulings on findings of fact of injury. It is appellant's burden of proof to establish her claim. An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ If appellant fails to meet this burden of proof, the Office can clearly deny a claim without exercising an affirmative defense. This argument lacks reasonable color of validity and is insufficient to require the Office to reopen appellant's claim for consideration of the merits.

With regard to the initial argument that in certain traumatic injury cases the Office can and should accept the claim without rationalized medical opinion evidence, the Board and the Office have narrowly construed this rule of law to apply in clear cases of cause and effect.⁴ The Office specifically mentions a fall from scaffolding resulting in a broken arm.⁵ In this case, given that appellant has previously accepted employment injuries to the same part of her body which were found to have ceased by the Office and that appellant alleged an additional back injury on her first full day back at work following the Office's termination of her prior benefits, appellant's diagnosed condition of mild muscle sprain is not such a clear case of cause and effect due to her accepted trip in her performance of duty, to relieve appellant of her burden to submit rationalized medical opinion evidence. The Office informed appellant of her burden in its May 17, 1999 development letter; therefore, this argument does not advance a point of law not previously considered by the Office.

As the arguments submitted by appellant's representative do not rise to the level to show that the Office abused its discretion by refusing to reopen appellant's claim for review of the merits, the September 24, 2001 decision is correct.

² 5 U.S.C. §§ 8101-1893.

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(2) (June 1995).

⁵ *Id.*

The September 24, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 24, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member