

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CELESTE CHANDLER and U.S. POSTAL SERVICE,
COLLEGE STATION, New York, NY

*Docket No. 01-2151; Submitted on the Record;
Issued May 3, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On February 23, 1999 appellant, then a 40-year-old letter carrier, sustained employment-related cervical and low back sprains. She stopped work on February 25, 1999 and received appropriate continuation of pay and compensation. By letter dated February 23, 2000, the Office informed appellant that it proposed to terminate her compensation, based on the opinion of Dr. Nate Bondi, who provided an impartial medical evaluation for the Office and who advised that appellant could return to work without restrictions. By letter dated March 22, 2000, appellant disagreed with the proposed termination and submitted additional medical evidence. By decision dated May 17, 2000, the Office terminated her compensation benefits, effective June 17, 2000, on the grounds that her work-related disability had ceased. On March 20, 2001 appellant through counsel, requested reconsideration and submitted additional evidence and argument. In a June 20, 2001 decision, the Office denied appellant's request for reconsideration. The instant appeal follows.

The Board finds that the Office did not abuse its discretion in denying appellant's request for review.

The only decision before the Board in this appeal is the decision of the Office dated June 20, 2001 denying appellant's application for review. Since more than one year had elapsed between the date of the Office's most recent merit decision dated May 17, 2000 and the filing of appellant's appeal on August 30, 2001, the Board lacks jurisdiction to review the merits of her claim.¹

¹ 20 C.F.R. § 501.3(d)(2).

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).² This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.³ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration.⁴

In the request for reconsideration, appellant's counsel contended that the Office erred because it failed to accept that appellant's knee condition was causally related to the employment injury of February 23, 1999, refused to authorize diagnostic testing and improperly determined that appellant could perform the date-of-injury position. The record indicates, however, that these contentions were addressed by the Office in its merit decision dated May 17, 2000. In requesting that Dr. Bondi perform an impartial medical evaluation, he was specifically asked to indicate whether appellant had an employment-related knee condition. Dr. Bondi was further authorized to undertake any testing that he deemed necessary. The Office, therefore, did not err in this regard.

Appellant further contended that Dr. Bondi's credentials were not in the record and that he was provided with an incomplete history. The record, however, indicates that Dr. Bondi was provided with a statement of accepted facts, a set of questions and definitions and the medical record. Furthermore, the record indicates that he is Board-certified in orthopedic surgery, was selected by the Physicians' Directory System (PDS) software.⁵ Thus, the Office did not err in this regard.

With her request for reconsideration appellant also submitted a medical report dated May 5, 2000 from Dr. Irving M. Etkind, her treating Board-certified orthopedic surgeon, who had previously submitted numerous reports and in his report dated May 5, 2000, he merely reiterated the findings, conclusions and recommendations that he had postulated previously. The Board has long held that the submission of evidence or legal argument which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁶ Therefore, Dr. Etkind's May 5, 2000 report was likewise insufficient to warrant merit review. The Office properly denied appellant's request for reconsideration.

² 20 C.F.R. § 10.608(a) (1999).

³ 20 C.F.R. § 10.608(b)(1) and (2) (1999).

⁴ 20 C.F.R. § 10.608(b) (1999).

⁵ Office procedures provide that the selection of referee physicians is made by a strict rotational system using the PDS software. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b) (May 1994).

⁶ *Sandra B. Williams*, 46 ECAB 546 (1995).

The June 20, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 3, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member