

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARLENE I. GALDAMEZ and U.S. POSTAL SERVICE,
POST OFFICE, Portland, OR

*Docket No. 01-2159; Submitted on the Record;
Issued May 22, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of disability, commencing March 29, 1999, due to the January 12, 1998 employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the November 16, 2000 decision of the Office, finalized on November 27, 2000, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.¹

By letter dated February 7, 2001, appellant requested reconsideration of the Office's decision and submitted additional evidence consisting of medical reports from Dr. Roxanne S. Donovan, a Board-certified physiatrist, dated April 7 and June 15, 1998, respectively, a normal electromyogram (EMG) dated January 23, 2001, appellant's description of her job dated July 11, 2000 and excerpts from the Office hearing representative's November 16, 2000 decision. Appellant also submitted a progress note from Christine Hakala dated February 25, 1999, two magnetic resonance imaging (MRI) scans, dated July 12 and August 24, 2000, respectively, reports from Dr. Mary Lenore Fines, a Board-certified internist, dated July 12, November 21 and August 31, 2000, and February 2, 2001, an x-ray dated February 23, 1998 and physical therapy notes dated September 26 through December 15, 2000. Further, appellant submitted a report from Robert Welsh dated October 12, 2000.

¹ The opinion of appellant's treating physician, Dr. James O. Nelson, a Board-certified neurological surgeon, that appellant's back condition was work related because her symptoms were consistent with the January 12, 1998 employment injury is insufficient to establish the requisite causal connection. *See Dominic M. DeScala*, 37 ECAB 369, 372-73 (1986). The opinions of Dr. Nelson and Dr. Robert C. Buza, a Board-certified neurological surgeon, also lacked medical rationale establishing causation. *See George DePasquale*, 39 ECAB 295, 304 (1987).

By decision dated May 14, 2001, the Office denied appellant's request for reconsideration.

The Board finds that the Office acted within its discretion in denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.² A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).³

None of the evidence appellant submitted addresses the relevant issue in appellant's case, *i.e.*, whether appellant's condition commencing March 29, 1999 was a recurrence of disability due to the January 12, 1998 employment injury.⁴ None of the evidence submitted addresses causation. The January 23, 2001 EMG, the August 24, 2000 MRI scan, Ms. Hakala's February 25, 1999 progress note, Dr. Fines' reports dated November 21, 2000 and February 2, 2001, the physical therapy notes dated September 26 through December 15, 2000, and Mr. Welsh's October 12, 2000 report do not address causation. Further, a physical therapist is not a physician within the meaning of the Act and therefore a physical therapist's opinion is not probative.⁵ Ms. Hakala and Mr. Welsh's qualifications are not in the record and therefore they do not qualify as physicians.⁶ Moreover, appellant's description of her job dated July 11, 2000, the February 23, 1998 x-ray, the July 12, 2000 MRI scan, Dr. Fines' July 12 and August 31, 2000 reports, and Dr. Donovan's April 7 and June 15, 1998 progress notes were contained in the record and therefore are repetitive.

Inasmuch as appellant did not show that the Office erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument or submit relevant and pertinent new evidence not previously considered by the Office, appellant has not established her claim.

² Section 10.606(b)(2)(i-iii).

³ Section 10.608(a).

⁴ See *George DePasquale*, *supra* note 1 (1987); *Terry R. Hedman*, 38 ECAB 222, 227 (1986); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁵ *Thomas R. Horsfall*, 48 ECAB 180, 182 n.3 (1996).

⁶ See *James A. Long*, 40 ECAB 538, 541-42 (1989).

The May 14, 2001 and November 27, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
May 22, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member