

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY R. GANG and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Akron, OH

*Docket No. 02-1346; Submitted on the Record;
Issued November 1, 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 properly denied appellant's request for reconsideration.

This case was previously before the Board.¹ By decision dated March 22, 2001, the Board affirmed Office decisions dated June 21, 2000 and November 29, 1999 in which the Office denied appellant's claim for an additional schedule award and her claim for a recurrence of disability causally related to her February 7, 1993 employment injury. The Board's March 22, 2001 decision is herein incorporated by reference.

The Board finds that the Office properly denied appellant's request for reconsideration.

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.² When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.³

On February 7, 1993 appellant, then a 44-year-old mailhandler, injured her lower back while pushing containers filled with magazines. The Office accepted her claim for low back strain/sprain. On January 7, 1997 appellant received a schedule award for a 27 percent

¹ See Docket No. 00-1033 (issued March 22, 2001).

² 20 C.F.R. § 10.606(b)(2).

³ 20 C.F.R. § 10.608(b).

permanent impairment of the right lower extremity and a 27 percent permanent impairment of the left lower extremity.

By letter dated September 4, 2001, appellant requested reconsideration of the Office's denial of her claim for an additional schedule award and submitted additional evidence.

By decision dated January 30, 2002, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and insufficient to warrant further merit review.⁴

In notes dated February 2, 2001, Dr. Frank Kousaie indicated that appellant was seen for a medication refill.

In a report dated March 1, 2001, Dr. Kousaie provided work restrictions due to chronic radicular leg pain and herniated discs.

In notes dated March 7, 2001, Dr. Kousaie indicated that appellant had back and leg pain and he refilled her medications.

In a form dated March 20, 2001, Dr. Kousaie instructed that appellant undergo six weeks of physical therapy.

In a report dated August 27, 2001, Dr. Kousaie stated that appellant had bulging discs at L4-5 and L5-S1 and foraminal stenosis. He indicated that appellant had been evaluated for permanent impairment by various physicians whose ratings varied from 25 percent to 50 percent.

In a report dated December 19, 2001, Dr. William Midian indicated that appellant was seen for back pain. He recommended that she have a magnetic resonance imaging scan to see if she had any disc pathology.

The only medical evidence submitted by appellant that mentions her schedule award claim is the August 27, 2001 report of Dr. Kousaie in which he noted that several physicians had evaluated appellant regarding her permanent impairment. However, he did not provide an impairment rating in his report. Therefore, his report does not constitute relevant and pertinent evidence not previously considered by the Office.

As appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent evidence not previously considered by the Office, the Office properly denied her request for reconsideration.

⁴ The record contains additional evidence that was not before the Office at the time it issued its January 30, 2002 decision. The Board has no jurisdiction to review this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

The decision of the Office of Workers' Compensation Programs dated January 30, 2002 is affirmed.

Dated, Washington, DC
November 1, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member