

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUSSELL E. LAMBERT and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

*Docket No. 02-1690; Submitted on the Record;
Issued November 8, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
COLLEEN DUFFY KIKO

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's March 10, 2002 request for reconsideration was insufficient to warrant merit review of the claim.

The case was before the Board on a prior appeal. In a decision dated January 2, 2002, the Board affirmed an Office decision dated January 31, 2001, finding that appellant had not established a recurrence of disability as of February 8, 2000. The history of the case is discussed in the Board's prior decision and is incorporated herein by reference.

In a letter dated March 10, 2002, appellant requested reconsideration of his claim. Appellant submitted a report dated January 30, 2001 from Dr. Bret Ferree, an orthopedic surgeon, noting that a magnetic resonance imaging in November 2000 had revealed degenerative disc disease with a suggestion of recurrent disc protrusion at the L5-S1 level. Dr. Ferree stated that given the failure of conservative treatment, appellant was a surgical candidate. In a handwritten addendum, Dr. Ferree opined that appellant's surgery would be related to his previous work injury.

By decision dated April 30, 2002, the Office determined that the request for reconsideration was insufficient to warrant merit review of the claim.

The Board finds that the Office properly determined that the March 10, 2002 request for reconsideration was insufficient to warrant merit review of the claim.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ the Office's regulations provides that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or

¹ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

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 Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.³

The January 30, 2001 report from Dr. Ferree recommends lumbar surgery and states that the surgery is causally related to the employment injury. The underlying issue in this case, however, is the recurrence of disability claim filed by appellant on February 8, 2000. Dr. Ferree does not provide any relevant medical evidence with respect to a recurrence of disability as of February 8, 2000. Authorization for surgery due to the accepted herniated discs is a separate issue that was not addressed by the Office in the January 31, 2001 decision. The Board finds that the evidence submitted is not relevant and pertinent to the issue presented, and is not sufficient to satisfy 20 C.F.R. § 10.606(b)(2)(iii). The application for reconsideration did not meet any of the requirements of section 10.606(b)(2), and therefore it is not sufficient to require reopening the case for a review of the merits of the claim.

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

Dated, Washington, DC
November 8, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

² 20 C.F.R. § 10.606(b)(2).

³ 20 C.F.R. § 10.608(b); *see also* Norman W. Hanson, 45 ECAB 430 (1994).