

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of IRENE L. MA and U.S. POSTAL SERVICE,  
POST OFFICE, Richmond, CA

*Docket No. 02-999; Submitted on the Record;  
Issued October 3, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs' refusal to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

On November 24, 1999 appellant, then a 50-year-old mailhandler, filed a traumatic injury claim, alleging that on November 19, 1999 a maintenance supervisor had assaulted her which caused a cheek injury and an emotional condition. She stopped work on November 24, 1999. By letter dated January 11, 2000, the Office informed appellant of the type evidence needed to support her claim. In response, she submitted treatment notes dated November 24, 29 and December 14, 1999 which contained a diagnosis of stress-related symptoms. The employing establishment submitted a statement from Don Engkvist, MDO supervisor. By decision dated February 22, 2000, the Office denied the claim, finding that appellant failed to establish that she sustained an injury at the time, place or in the manner alleged.

On March 8, 2000 appellant, through her attorney, requested a review of the written record and submitted additional medical evidence and a statement dated November 21, 1999 in which she alleged that Jim Harris, a coworker, tried to kiss her on November 19, 1999 and his chin bumped her left cheek. She further submitted statements from David Furtado, a shop steward and Geraldine Jenkins, the union president. The employing establishment submitted an additional statement from Mr. Engkvist.

By decision dated July 11, 2000, an Office hearing representative affirmed the prior decision. On August 13, 2000 appellant, through her attorney, requested reconsideration and submitted additional evidence. In a decision dated January 10, 2001, the Office denied modification of the prior decision. On February 28, 2001 appellant's attorney again requested reconsideration, and submitted a duplicate of the November 24, 1999 treatment note which she had submitted when she initially filed her claim. By decision dated April 23, 2001, the Office denied appellant's reconsideration request, finding appellant's arguments repetitious and the evidence submitted duplicative. 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 April 23, 2001 denying appellant's applications for review. Since more than one year had elapsed between the date of the Office's most recent merit decision dated January 10, 2001 and the filing of appellant's appeal on February 28, 2002, the Board lacks jurisdiction to review the merits of her claim.<sup>1</sup>

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).<sup>2</sup> 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.<sup>3</sup> 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 without reopening the case for a review on the merits.<sup>4</sup>

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.<sup>5</sup>

With her February 28, 2001 reconsideration request, appellant reiterated her contention that the evidence of record was sufficient to establish that she sustained an injury on November 19, 1999 and, as proof, submitted a duplicate of a November 24, 1999 treatment note<sup>6</sup> which had been submitted with her initial claim. 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.<sup>7</sup> As appellant submitted no new relevant evidence or

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<sup>1</sup> 20 C.F.R. § 501.3(d)(2).

<sup>2</sup> 20 C.F.R. § 10.608(a) (1999).

<sup>3</sup> 20 C.F.R. § 10.608(b)(1) and (2) (1999).

<sup>4</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>5</sup> See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

<sup>6</sup> The treatment note documents appellant's complaints of cold-like symptoms and a history that she reported she was "assaulted by a supervisor" at work on November 19, 1999. Examination findings included "'? mild ?'" swelling left cheek. Diagnoses were stress-related symptoms, upper respiratory infection and urinary tract infection. The physician's signature is illegible.

<sup>7</sup> *Sandra B. Williams*, 46 ECAB 546 (1995).

argument in support of her request for reconsideration, the Board finds that the Office properly denied merit review of her claim.<sup>8</sup>

The decision of the Office of Workers' Compensation Programs dated April 23, 2001 is hereby affirmed.

Dated, Washington, DC  
October 3, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>8</sup> *Sherry A. Hunt*, 49 ECAB 467 (1998).