

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALAN L. DERICCO and U.S. POSTAL SERVICE,
POST OFFICE, Reno, NV

*Docket No. 02-1104; Submitted on the Record;
Issued October 1, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant is entitled to a schedule award for the accepted conditions of right inguinal hernia and perforated appendix; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for a merit review under 20 C.F.R. § 10.608.

On June 8, 1995 appellant, then a 47-year-old mailman, claimed he suffered a hernia and perforated appendix as a result of a June 2, 1995 lifting accident. The Office accepted his claim for the conditions of right inguinal hernia and perforated appendix and paid appropriate benefits, which included surgical repair of both conditions. The record reflects that appellant underwent two surgeries

On October 4, 2000 the Office received a Form CA-7, claim for compensation from appellant requesting a schedule award for permanent impairment resulting from his hernia condition and subsequent surgeries.

By decision dated October 12, 2000, the Office rejected appellant's claim for a schedule award on the basis that the injured parts of appellant's body were not compensable members under the Federal Employees' Compensation Act.

By letter dated November 29, 2000, appellant requested reconsideration. The evidence submitted with his request was duplicative of evidence already in the record.

By decision dated September 7, 2001, the Office denied appellant's reconsideration request without reaching the merits of appellant's claim.

The Board finds that appellant is not entitled to a schedule award for his accepted conditions.

The schedule award provision of the Act, section 8107,¹ provides for payment of schedule awards for permanent loss or loss of use of, specified anatomical members or functions of the body. Subsection (c)(22) provides: “For permanent loss or loss of use of any other important external or internal organ of the body as determined by the Secretary, proper and equitable compensation not to exceed 312 weeks of compensation for each organ so determined shall be paid in addition to any other compensation payable under this schedule.” Pursuant to the authority provided in section 8107(c)(22), the Office added seven organs of the body to the compensation schedule in section 10.404(a) of its regulations.²

In this case, appellant’s accepted conditions of hernia and perforated appendix concerned the area involving the abdomen and lower intestine. However, neither of these body parts are considered specified anatomical members under section 8107(c).³ Because neither the Office nor the Board has the authority to enlarge the terms of the Act or to make an award of benefits under any terms other than those specified in the statute,⁴ the Board finds that appellant is not entitled under the Act to a schedule award for injuries suffered to his abdomen (hernia) and lower intestine (appendix).⁵

The Board also finds that the Office properly exercised its discretion in refusing to reopen appellant’s case for a merit review under 20 C.F.R. § 10.608.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either:

- (1) Showing that the Office erroneously applied or interpreted a specific point of law;
- (2) Advancing a relevant legal argument not previously considered by the Office;
- or
- (3) Submitting relevant and pertinent new evidence not previously considered by the Office.⁶

Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁷

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404(a).

³ 5 U.S.C. § 8107(c).

⁴ *Richard T. DeVito*, 39 ECAB 668 (1988).

⁵ The Board notes that its decision on appellant’s entitlement to a schedule award for the conditions of hernia and appendix does not affect his entitlement, if any, to monetary compensation for wage loss or his entitlement, if any, to medical benefits for the residuals of his accepted employment injury.

⁶ 20 C.F.R. § 10.606(b)(2) (1999).

Appellant's November 29, 2000 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law.⁸ Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2). With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, the Board notes that the vast majority of evidence that accompanied appellant's request for reconsideration consisted of previously submitted information or were progress notes relating to appellant's recurrent right inguinal hernia condition. While appellant added his own comments to much of this evidence in his request for reconsideration, this does not change the substance of the information contained therein. Appellant's comments have been taken into consideration in reviewing his request for reconsideration, however, the repetitive nature of the underlying documentation renders it insufficient to warrant reopening of appellant's claim.⁹

While appellant may unfortunately suffer from a recurrent hernia condition, this does not change the fact that the Act does not consider the area of the abdomen (hernia) and lower intestine (appendix) to be compensable members. Consequently, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2). As appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying appellant's November 29, 2000 request for reconsideration.

⁷ 20 C.F.R. § 10.608(b) (1999).

⁸ The Board notes that in a letter dated December 10, 2000, appellant duplicated the contents of his November 29, 2000 reconsideration request.

⁹ Evidence that is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening the claim. *James A. England*, 47 ECAB 115, 119 (1995); *Saundra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Power*, 45 ECAB 877 (1994).

The September 7, 2001 and October 12, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
October 1, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member