

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ESSIE M. FRANKLIN and U.S. POSTAL SERVICE,
POST OFFICE, Royal Oak, MI

*Docket No. 02-1119; Submitted on the Record;
Issued October 28, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

This case is before the Board for the third time. In a decision dated July 26, 1989, the Board affirmed the Office's October 15, 1988 decision denying appellant's request for a hearing as modified to reflect that it addressed her request for a hearing on the August 26, 1988 decision by the Office.¹ The Board remanded the case for the Office to consider appellant's request for a hearing on the Office's August 19, 1988 decision denying her claim for disability beginning March 12, 1986. In a decision dated July 23, 1998, the Board reversed the Office's August 9, 1995 decision terminating appellant's compensation on the grounds that the opinion of the impartial medical specialist was insufficient to resolve a conflict in medical opinion.²

By decision dated June 2, 2000, the Office terminated appellant's compensation effective that date on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Zachary Endress, a Board-certified orthopedic surgeon and impartial medical examiner, established that she had no further employment-related residual condition or disability.³

¹ Docket No. 89-361 (issued July 26, 1989).

² Docket No. 96-59 (issued July 23, 1998).

³ In a report dated July 8, 1999, Dr. Endress diagnosed degenerative disc disease and a herniated disc causally related to appellant's employment by history and found that she was disabled from work. In a report dated August 18, 1999, Dr. Endress described objective findings supporting his conclusions. By letter dated December 1, 1999, the Office requested that Dr. Endress review video surveillance of appellant conducted by the employing establishment and discuss whether it changed his opinion of appellant's condition. In a report dated February 29, 2000, Dr. Endress opined that appellant could return to her usual employment. He further found, in a supplemental report dated May 8, 2000, that appellant had no further residuals of her employment-related low back condition or need for further medical treatment.

In a letter dated June 27, 2000, appellant, through her representative, requested a hearing and subpoenas of all information relevant to the employing establishment's investigation of appellant. On October 31, 2000 the hearing representative denied appellant's request that subpoenas be issued to the employing establishment.

By decision dated February 6, 2001, the hearing representative affirmed the Office's June 2, 2000 decision terminating appellant's compensation and authorization for medical treatment. On March 23, 2001 appellant appealed to the Board. In a letter received by the Board on September 20, 2001, appellant, through her representative, requested that the appeal be dismissed in order for her to pursue reconsideration before the Office. In a letter dated September 26, 2001, received by the Office on October 10, 2001, appellant requested reconsideration of her claim. In an order dated October 29, 2001, the Board granted appellant's request that her appeal be dismissed.⁴

In a decision dated March 1, 2002, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and, thus, insufficient to warrant review of its prior merit decision.

The Board finds that the Office properly denied appellant's request for reconsideration under section 8128.

The only decision over which the Board has jurisdiction is the Office's March 1, 2002 decision denying appellant's request for a review of the merits of the case. Because more than one year has elapsed between the issuance of the Office's decision dated February 6, 2001 and April 4, 2002, the date appellant filed her appeal before the Board, the Board lacks jurisdiction to review the decision dated February 6, 2001.⁵

Section 10.606 of 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 new evidence not previously considered by the Office.⁶ Section 10.608 provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁷

In support of her request for reconsideration, appellant submitted copies of the video surveillance photographs obtained by employing establishment investigators with her own explanations of the contents. However, the issue of whether appellant has any further employment-related condition or disability is medical in nature and, therefore, must be resolved

⁴ Order Dismissing Appeal, Docket No. 01-1162 (issued October 29, 2001).

⁵ See 20 C.F.R. §§ 501.2(c), 501.3(d).

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ 20 C.F.R. § 10.608(b).

by the submission of relevant medical evidence. As discussed above, evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁸

Appellant argued that the impartial medical examiner erred in finding her able to resume employment based on the videotapes and photographs from the employing establishment rather than a repeat examination. The Office, however, previously considered and rejected appellant's argument. Thus, appellant's contention is repetitious and insufficient to require a reopening of the case for a merit review.

As abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from known facts.⁹ Appellant has made no such showing here and, thus, the Board finds that the Office properly denied her application for reconsideration of her claim.

The decision of the Office of Workers' Compensation Programs dated March 1, 2002 is affirmed.

Dated, Washington, DC
October 28, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁸ See *Dominic E. Coppo*, 44 ECAB 484 (1993).

⁹ *Rebel L. Cantrell*, 44 ECAB 660 (1993).