

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM A. FURAN and U.S. POSTAL SERVICE,  
POST OFFICE, Marshall, MN

*Docket No. 03-653; Submitted on the Record;  
Issued April 17, 2003*

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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 abused its discretion by refusing to reopen appellant's case for merit review.

On September 8, 1997 appellant, then a 53-year-old distribution/window clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he suffered a ruptured disc and a hernia as a result of his federal employment. He identified June 16, 1997 as the date he first became aware of his employment-related condition. Although initially denied, the Office ultimately accepted appellant's claim for herniated discs at L4-5 and L5-S1. Additionally, the Office authorized a hemilaminectomy and microdiscectomy at L4-5, which appellant underwent on January 14, 1998. He underwent a second similar procedure on August 5, 1998.

The Office initially paid wage-loss compensation for the period December 20, 1997 through March 19, 1998. On June 21, 1999 appellant filed a claim for 227.55 hours of wage-loss compensation for the period October 25 through December 19, 1997. By decision dated December 15, 1999, the Office awarded appellant an additional 21 hours of wage-loss compensation. With respect to the remaining 206.55 hours claimed during the period October 25 through December 19, 1997, the Office found that the medical evidence failed to explain how appellant's work-related condition rendered him totally disabled.

On January 8, 2000 appellant requested a review of the written record. In a decision dated May 10, 2000 and finalized May 12, 2000, the Office hearing representative affirmed the December 15, 1999 decision.

On April 22, 2001 appellant requested reconsideration and after reviewing the claim on the merits, the Office denied modification in a decision dated July 25, 2001.

Appellant again requested reconsideration on July 19, 2002. By decision dated October 17, 2002, the Office denied appellant's request for reconsideration.

The Board finds that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.<sup>1</sup>

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) constituting relevant and pertinent new evidence not previously considered by the Office.<sup>2</sup> 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.<sup>3</sup>

Appellant's July 19, 2002 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. 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 majority of the evidence appellant submitted on reconsideration was previously of record. As this evidence does not constitute "relevant and pertinent new evidence," it is insufficient to warrant modification of the prior decision.<sup>4</sup>

The only newly submitted evidence is a November 3, 1997 prescription pad note from Dr. Scott J. Huckins indicating that appellant had an epidural steroid injection that day. He further noted that appellant should refrain from lifting more than 15 pounds and was unable to stand at that time. Appellant claimed 4.55 hours of wage-loss compensation for the period October 25 through November 7, 1997 and the Office's December 15, 1999 decision awarded him 5 hours of wage-loss compensation for that period. As appellant received all the compensation claimed for the period covered by Dr. Huckins' November 3, 1997 note, this evidence is cumulative and, therefore, insufficient to warrant reopening his claim.<sup>5</sup> Accordingly, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).

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<sup>1</sup> The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. *Marilyn F. Wilson*, 51 ECAB 234, 235 (1999). The instant appeal was postmarked January 15, 2003. As such, the Board does not have jurisdiction over the Office's July 25, 2001 merit decision.

<sup>2</sup> 20 C.F.R. § 10.606(b)(2) (1999).

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

<sup>4</sup> 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. *Saundra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

<sup>5</sup> *Saundra B. Williams*, *supra* note 4.

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 July 19, 2002 request for reconsideration.

The October 17, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
April 17, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member