

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BEVERLY O'NEIL and U.S. POSTAL SERVICE,  
POST OFFICE, Nashville, TN

*Docket No. 03-199; Submitted on the Record;  
Issued February 20, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's April 16, 2002 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

This case has been before the Board on a prior appeal. In a decision and order issued March 1, 2001<sup>1</sup> the Board set aside a November 18, 1998 decision of the Office, which denied appellant's request for reconsideration of a termination decision dated October 5, 1997. The Board remanded the case to the Office for a *de novo* decision on the merits, in order to preserve appellant's appeal rights, because the Office delayed in issuing a timely decision. The history of the case up to this point is found in the Board's prior decision and is incorporated herein by reference.

The Office issued a decision dated May 24, 2001, denying modification of the October 5, 1997 termination decision. In letters dated September 12 and October 1, 2001, appellant again requested reconsideration. The Office denied appellant's request for reconsideration in a nonmerit decision dated October 17, 2001.

In a letter received by the Office on April 16, 2002, appellant requested reconsideration.<sup>2</sup> By decision dated August 6, 2002, the Office denied appellant's request for reconsideration on

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<sup>1</sup> Docket No. 99-708.

<sup>2</sup> The record reflects that appellant had previously requested a hearing on August 17, 2001, requested reconsideration in a letter dated November 26, 2001 and then resubmitted the August 17, 2001 request on April 16, 2002. In response to the April 16, 2002 submission, the Office indicated on July 25, 2002 that it reviewed the file and determined that the decisions dated May 24 and October 17, 2001 did not include a "hearing" as an avenue of appeal. Therefore the Office advised appellant that the case would be assigned for a review at that time based on the April 16, 2002 submission. The Board notes that the only Office decision before the Board on this appeal is the August 6, 2002 decision denying appellant's April 16, 2002 request for reconsideration. The Board has no jurisdiction to review the May 24 and October 17, 2001 decisions or earlier decisions. Therefore, the only issue before the Board is whether the Office acted within its discretion in denying the April 16, 2002 request. *See* 20 C.F.R. § 501.3(d)(2).

the grounds that the request neither raised substantive questions nor included new, relevant medical evidence and, therefore, was insufficient to warrant review.

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

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advanced a point of law not previously considered by the Office, or submitted relevant and pertinent evidence not previously considered by the Office. Section 10.608(b) 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.<sup>3</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>4</sup> Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.<sup>5</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>6</sup>

In the present case, appellant did not provide any reports with relevant or pertinent new evidence regarding whether her current condition or disability was caused by employment factors, nor did she advance a relevant legal argument that had not been previously considered by the Office. Additionally, appellant did not argue that the Office erroneously applied or interpreted a specific point of law. Consequently, appellant is not entitled to a merit review of the merits of the claim based upon any of the above-noted requirements under 10.606(b)(2). Accordingly, the Board finds that the Office properly denied appellant's April 16, 2002 request for reconsideration.<sup>7</sup>

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<sup>3</sup> 20 C.F.R. § 10.608(b).

<sup>4</sup> See *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

<sup>5</sup> See *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

<sup>6</sup> 20 C.F.R. § 10.608(b).

<sup>7</sup> Appellant submitted additional evidence with her appeal. However, the Board may not consider new evidence on appeal; see 20 C.F.R. § 501.2(c). The Board notes that appellant made reference in her appeal to a decision of the Office purportedly issued in October 2002 denying review of the record. A decision dated in October 2002 is not contained in the record. The Board notes that, following appellant's August 6, 2002 decision, appellant's only right of appeal was to the Board.

The August 6, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
February 20, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member