

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEANNE M. HOROWITZ and U.S. POSTAL SERVICE,
POST OFFICE, Ellenville, NY

*Docket No. 02-2031; Submitted on the Record;
Issued March 26, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's February 13, 2002 request for reconsideration.

On May 23, 1989 appellant, then a 34-year-old part-time flexible clerk/letter carrier, sustained an injury in the performance of duty while carrying a mail route. The Office accepted her claim for left shoulder strain and cervical strain and paid compensation benefits. She returned to limited duty.

In a decision dated November 14, 2000, the Office denied appellant's claim that she sustained a recurrence of disability on August 26, 1999 as a result of her May 23, 1989 employment injury. The Office found that appellant had submitted insufficient evidence to demonstrate that her claimed disability was causally related to the accepted injury.

Appellant submitted additional medical evidence and requested reconsideration.

In a decision dated March 12, 2001, the Office denied a merit review of appellant's claim on the grounds that the medical opinion evidence she submitted was unsupported by medical rationale, failed to address her claimed cervical condition and failed to document any bridging symptoms for the nine years since she returned to regular duties in April 1991.

On February 13, 2002 appellant again requested reconsideration.¹ She argued that the medical evidence of file satisfied her burden of proof to establish that her recurrence of total disability on August 26, 1999 was causally related to the injuries and conditions she sustained as a result of the incident on May 23, 1989. She argued that the Office should have accepted all conditions outlined in the medical evidence, not just left shoulder strain and cervical strain. She

¹ Appellant requested reconsideration of the Office's March 12, 2001 decision in the instant case, as well as a May 25, 2001 decision by the Office in OWCP File No. 020767490, relating to a bilateral carpal tunnel syndrome injury, which is not before the Board on this appeal.

also argued that there was a change in the nature and extent of her “injuries and disability” causally related to the incident of May 23, 1989.

To support her request for reconsideration, as it related to her claim of recurrence, appellant submitted a May 25, 2001 report from her attending neurosurgeon, Dr. Modesto Fontanez, who related a history of injury and appellant’s recent medical history. He described his findings on examination and reported that, as of appellant’s last visit on December 5, 2000, his diagnosis was severe cervical and trapezial sprain and strain with traumatic fibromyositis. Dr. Fontanez stated:

“In my opinion, this condition is causally related to the accident of July 9, 1999. This condition is permanent and as a result the patient has a disability that is moderate to severe. Her prognosis is guarded.

“The patient will have permanent residuals in limitation in axial weight bearing capacity of her cervical spine and limitations in range of motion.”

Appellant also submitted a January 21, 2002 report from Dr. James R. Miller, a plastic surgeon, who reviewed his treatment of appellant since August 2, 1999. He noted that, when appellant returned to his office on September 1, 1999, she had improved symptoms in both upper extremities. After reviewing appellant’s treatment, Dr. Miller determined her upper extremity impairment using the second edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He indicated that appellant’s bilateral carpal tunnel syndrome complaints and associated symptoms improved considerable after carpal tunnel release.

In a decision dated May 17, 2002, the Office denied a merit review of appellant’s claim on the grounds that the evidence submitted in support of her February 13, 2002 request for reconsideration was immaterial to her claim of recurrence. The Office noted that Dr. Fontanez failed to make reference to the recurrence date claimed and related appellant’s condition to an accident on July 9, 1999, as opposed to the accepted injury of May 23, 1989. The Office found that other evidence submitted by appellant did not relate to her claim of a recurrence on August 26, 1999 but related instead to other matters, such as suitable work and a schedule award, which were outside the scope of its decision.

An appeal to the Board must be mailed no later than one year from the date of the Office’s final decision.² Because appellant mailed her July 24, 2002 appeal more than one year after the Office’s November 14, 2000 and March 12, 2001 decisions, the Board has no jurisdiction to review those decisions. The only decision that the Board may review is the Office’s May 17, 2002 decision denying appellant’s February 13, 2002 request for reconsideration.

The Board finds that the Office properly denied appellant’s February 13, 2002 request for reconsideration.

² 20 C.F.R. §§ 501.3(d), 501.10(d)(2) (time for filing, computation of time).

Section 10.606(b) of the Code of Federal Regulations³ provides that an application for reconsideration, including all supporting documents, must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office. The request may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If the Office grants reconsideration, the case is reopened and reviewed on its merits. Where the request fails to meet at least one of the standards described, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁴

Appellant's February 13, 2002 request for reconsideration meets none of these standards. The request fails to show that the Office erroneously applied or interpreted a specific point of law. The Office previously considered the sufficiency of the medical evidence on the issues of recurrence and accepted conditions; appellant's argument in this regard does not warrant reopening her case for a merit review. Further, the medical evidence submitted to support appellant's request did not address the central issue in her case: whether she sustained a recurrence of disability on August 26, 1999 as a result of her May 23, 1989 employment injury. The Office correctly noted that Dr. Fontanez related appellant's current condition to an accident on July 9, 1999. This does not support her claim of a recurrence. Dr. Miller's January 21, 2002 report also has no bearing on appellant's claim of recurrence. He reviewed his treatment of appellant but at no point reported that appellant was disabled for work on August 26, 1999 as a result of her May 23, 1989 employment injury. He did not declare appellant disabled when he first saw appellant on August 2, 1999, and when he next saw her on September 1, 1999 he noted that symptoms in both her upper extremities were improved. Dr. Miller's opinion on permanent impairment is outside the scope of the Office's November 14, 2000 decision denying her claim of recurrence.

Because appellant's February 13, 2002 request for reconsideration fails to meet at least one of the standards for obtaining a merit review of her recurrence claim, the Office properly denied her request.

³ 20 C.F.R. § 10.606(b) (1999).

⁴ *Id.* at § 10.608.

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

Dated, Washington, DC
March 26, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member