

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PATRICK SLOAN and U.S. POSTAL SERVICE,  
POST OFFICE, Willingboro, NJ

*Docket No. 03-47; Submitted on the Record;  
Issued March 7, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a recurrence of disability on March 3, 1997, such that he could no longer perform his light-duty job four hours a day; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's application for review on June 17, 2002.

This is the second appeal in this case.<sup>1</sup> On the first appeal, the Board affirmed a February 17, 1998 decision, by which the Office denied appellant's application for further merit review of his claim for a consequential back injury, pursuant to 5 U.S.C. § 8128(a).<sup>2</sup> The Board further noted that, in addition to his claim for a consequential back condition, appellant had also filed a claim for a March 3, 1997 recurrence of disability causally related to his accepted right knee conditions. With respect to appellant's claim for a recurrence of total disability, the Board noted that, in a decision dated March 4, 1998, the Office denied appellant's claim on the grounds that he had submitted insufficient medical evidence to meet his burden of proof. Appellant requested an oral hearing, and in a decision dated January 6, 1999, an Office hearing representative set aside the Office's prior decision and remanded the case to the Office to be referred to a medical specialist for further medical development. Therefore, the Board found that as the January 6, 1999 decision of the Office hearing representative set aside and remanded the March 4, 1998 decision of the Office on the issue of appellant's claimed recurrence of total disability, the Board had no jurisdiction over the recurrence at that time as the matter was in an

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<sup>1</sup> Docket No. 99-924 (issued January 19, 2001).

<sup>2</sup> Appellant had asserted that his back injury occurred as a consequence of his accepted right knee injuries. In a merit decision dated October 14, 1997, the Office found the weight of the medical evidence insufficient to establish appellant's claim for a consequential back injury. On reconsideration, in a decision dated February 17, 1998, the Office found that the medical evidence submitted in support of appellant's claim was insufficient to warrant further merit review pursuant to 5 U.S.C. § 8128(a). On appeal, by decision dated January 19, 2001, the Board affirmed the Office's February 17, 1998 decision.

interlocutory position before the Office.<sup>3</sup> The complete facts of this case are set forth in the Board's January 19, 2001 decision and are herein incorporated by reference.

Subsequent to the Board's decision, in a decision dated May 24, 2001, the Office denied appellant's claim for a recurrence of disability, causally related to his accepted right knee conditions. By letter dated June 8, 2001, appellant requested an oral hearing before an Office representative. In a decision dated January 31, 2002, an Office hearing representative affirmed the denial of appellant's recurrence claim. By letter dated April 24, 2002, appellant submitted medical evidence and arguments to the Office pertaining to his recurrence claim and requested reconsideration of the prior decision. In a decision dated June 17, 2002, the Office found the evidence and arguments submitted on reconsideration to be insufficient to warrant further merit review of appellant's claim.

With respect to appellant's claim for a March 3, 1997 recurrence of disability, causally related to his accepted right knee conditions, the Board has given careful consideration to the issues involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office dated January 31, 2002, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

The Board also finds that the Office did not abuse its discretion by denying appellant's application for review on June 17, 2002.

Following the decision dated January 31, 2002, appellant requested that the Office reconsider his claim for a recurrence of disability. In support of this request for reconsideration, appellant submitted additional medical reports from Dr. Laura E. Ross, his treating osteopath. In a March 8, 2002 report, she noted her findings on physical examination, and stated that appellant was still unable to be employed in any gainful employment due to residual problems of his knee. Dr. Ross recommended that appellant undergo additional x-rays and diagnostic testing. As she addressed appellant's condition at the time of her recent examination, and did not discuss why he was unable to perform his light-duty job beginning March 3, 1997, her March 8, 2002 report does not constitute a basis for reopening appellant's claim.<sup>4</sup> In a report dated April 1, 2002, Dr. Ross stated that, due to appellant's progressively worsening degenerative arthritis of his right knee, as shown on x-ray and magnetic resonance imaging, he was unable to perform his four-hour-a-day sedentary job, and could not have returned to his light-duty job at any time during the past few years. This report, however, essentially reiterates Dr. Ross' opinion stated in prior reports of record, including her reports dated October 2, 1997, March 16, 1998, February 16, 1999 and February 29, 2000. Therefore, Dr. Ross' April 1, 2002 report is cumulative and is insufficient to warrant reopening of appellant's claim.<sup>5</sup>

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<sup>3</sup> See 20 C.F.R. § 501.2(c).

<sup>4</sup> Evidence that does not address the particular issue involved does not constitute a basis for reopening a case. *Linda I. Sprague*, 48 ECAB 386 (1997); *Alton L. Vann*, 48 ECAB 259 (1996).

<sup>5</sup> The submission of evidence or legal argument which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case. *Linda I. Sprague*, *supra* note 4; *Bertha J. Soule (Ralph G. Soule)*, 48 ECAB 314 (1997).

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>6</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>7</sup> Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>8</sup>

The Office, in denying appellant's application for review, properly noted that Dr. Ross' supplemental reports did not contain any new evidence or provide the necessary rationale which was absent from her earlier reports. As her reports either merely reiterated her previous findings, or failed to address the pertinent issue in this claim, they did not require a reopening of the case for merit review.

The decisions of the Office of Workers' Compensation Programs dated June 17 and January 31, 2002 are hereby affirmed.

Dated, Washington, DC  
March 7, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>6</sup> 20 C.F.R. § 10.608(a) (1999).

<sup>7</sup> 20 C.F.R. § 10.608(b)(1) and (2) (1999).

<sup>8</sup> 20 C.F.R. § 10.608(b) (1999).