

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**ZEPUOR PARSANIAN, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Santa Clarita, CA, Employer**

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**Docket No. 04-1385  
Issued: November 22, 2004**

*Appearances:*  
*Coleen Street*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On August 15, 2003 appellant filed an appeal from an Office of Workers' Compensation Programs' nonmerit decision dated May 29, 2003 which denied her request for merit review. Because more than one year has elapsed from the last merit decision dated May 21, 2002, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUE**

The issue is whether the Office properly denied appellant's request for reconsideration of her claim pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On May 5, 2000 appellant, then a 38-year-old distribution window clerk, part-time flexible (PTF), filed a recurrence of disability claim (Form CA-2a) alleging that she sustained a recurrence of her accepted January 26, 1999 back injury when she lifted a bucket full of mail on

April 3, 2000.<sup>1</sup> Appellant's previous claim of January 26, 1999 was accepted for a lumbosacral strain/sprain.<sup>2</sup> Appellant stopped work on September 30, 2000 and returned to limited-duty work on January 18, 2001. On October 16, 2000 the Office accepted the claim for a lumbar subluxation. Appropriate medical and compensation benefits were paid.

On June 11, 2001 appellant filed a Form CA-7, claiming compensation for the period May 30 to June 7, 2001. The July 15, 2001 time analysis form indicated that appellant used leave without pay (LWOP) on May 30 and 31, 2001, her scheduled regular days off were June 3 and 7, 2001 and she worked full days on June 1, 2, 4 and 5, 2001 and a half day on June 6, 2001. As appellant's work status was PTF, the employing establishment stated that hours were not guaranteed. No medical evidence contemporaneous to the claimed period was submitted.

By decision dated July 19, 2001, the Office denied appellant's claim for compensation as the medical evidence of record failed to support total disability during the period claimed.

In an August 12, 2001 letter, appellant requested an oral hearing, which was held on February 26, 2002. Medical evidence from Dr. Robere J. Missirian, an orthopedic surgeon and appellant's treating physician, contemporaneous to the period claimed for compensation was submitted. In May 3 and August 16, 2001 reports, Dr. Missirian diagnosed appellant with a musculoligamentous injury of the lumbar spine with L5-S1 discopathy and opined that she could continue to work modified duties with restrictions of no heavy work.

By decision dated May 21, 2002, an Office hearing representative affirmed the July 19, 2001 decision. The hearing representative found that the medical evidence of record failed to establish that appellant was disabled for the period May 30 to June 7, 2001 due to the accepted work injury of April 3, 2000. The hearing representative stated that, although work may not have been available to appellant during this period, this was due to her being a PTF employee and not due to any work-related disability.

In a May 15, 2003 letter, appellant requested reconsideration. Appellant stated that she was denied work either because of her PTF status or because of her work injury. She asserted that other PTF employees, even junior PTFs, were working 40 hours per week. Appellant submitted numerous copies of correspondence to various agencies, copies of her grievances and Equal Employment Opportunity (EEO) Commission complaint regarding the availability of work for a PTF employee, copies of clock rings and work-hour analysis for various periods in years 2000 to 2003 of her and other employees, and copies of previously submitted medical reports, time analysis reports and claims for compensation for periods beginning in April 2000 and ending May 10, 2002.

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<sup>1</sup> While appellant filed a recurrence claim, the case was properly adjudicated as a new injury.

<sup>2</sup> The case record does not contain the Office acceptance letter from her previous condition. The record reflects that the January 26, 1999 work injury was assigned claim number 131181577 and, from appellant's statement's on the recurrence claim, apparently covered her medical care while she was under limited-duty status.

By decision dated May 29, 2003, the Office denied appellant's request for reconsideration finding that she failed to submit new and relevant evidence or raise legal contentions not previously considered.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,<sup>3</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>4</sup> Section 10.608(b) provides that, when an application for review of the merits of a claim 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>5</sup> When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the regulatory standards to the claimant's application for reconsideration and any evidence submitted in support thereof.<sup>6</sup>

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>7</sup> The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>8</sup> While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.<sup>9</sup>

### **ANALYSIS**

In support of her May 15, 2003 request for reconsideration, appellant did not submit any new and relevant evidence with respect to the Office's May 21, 2002 decision, which denied her claim for compensation for the period May 30 to June 7, 2001 as the medical evidence did not establish that she was disabled during the period claimed due to the accepted work injury of April 3, 2000. The majority of the medical evidence appellant submitted from Dr. Missirian was previously submitted and considered by the Office. As noted above, material which is repetitious or duplicative of that already in the case record has no evidentiary value in

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<sup>3</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>5</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>6</sup> *Annette Louise*, 54 ECAB \_\_\_\_ (Docket No. 03-335, issued August 26, 2003).

<sup>7</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>8</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>9</sup> *John F. Critz*, 44 ECAB 788, 794 (1993).

establishing a claim and does not constitute a basis for reopening a case.<sup>10</sup> The Board notes that, although there are some new medical reports from Dr. Missirian issued in 2002 which were not previously considered by the Office, these reports do not address the period of disability claimed (May 30 to June 7, 2001) and are therefore not relevant to the issue of whether appellant is entitled to total disability compensation for the period May 30 to June 7, 2001. Thus, the Office properly found that appellant had failed to submit new and relevant evidence. The Board notes that, as the record contains copies of several claims for compensation during the periods from 2000 to 2003, many which were previously submitted to the Office, along with leave slips and leave analysis, the Office properly advised appellant that she should contact the employing establishment regarding whether she can repurchase leave.

In her request for reconsideration, appellant also appears to argue that she was subject to disparate treatment. While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening for further review of the merits is not required where the legal contention does not have a reasonable color of validity.<sup>11</sup> Appellant has argued that she was not allowed by the employing establishment to work 40 hours due to her PTF status and her compensation claim. She stated that other PTF employees, even those junior to her, were allowed to work 40 hours. At the February 26, 2002 hearing, appellant testified that she had been employed as a PTF distribution window clerk since January 1994 and that she had sustained her first injury in 1999. In its May 21, 2002 decision, the Office hearing representative found that, although work may not have been available to appellant during the claimed period, this was a result of her status as a PTF employee and had no relation to her work-related disability.<sup>12</sup> Thus, appellant's arguments regarding her PTF status were previously considered in the Office's May 21, 2002 decision and fail to show that the Office erroneously applied or interpreted a specific point of law. Appellant's arguments, grievances and EEO complaints regarding the availability of work for a PTF employee also offer no new relevant information to the present claim. The hearing representative specifically found that work was not available to appellant during the claimed period because of her PTF status and was not due to any work-related disability. Thus, appellant's arguments pertaining to her PTF status and her belief that the employing establishment failed to accommodate her because of that status have no bearing on the present claim and lack any reasonable color of validity. Accordingly, appellant has failed to show that the Office erroneously applied or interpreted a specific point of law or advance a legal argument not previously considered by the Office.

The Board finds that appellant did not meet any of the requirements of section 10.606(b)(2) and, therefore, the Office properly denied the May 15, 2003 request for reconsideration without merit review of the claim.

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<sup>10</sup> *Vincent Holmes*, 53 ECAB \_\_\_ (Docket No. 00-2644, issued March 27, 2002).

<sup>11</sup> *Id.*

<sup>12</sup> The record indicates that, on May 30 and 31, 2001, appellant had to use LWOP as the employing establishment had no work available.

**CONCLUSION**

The Board finds that the Office properly denied merit review of appellant's claim on May 29, 2003.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 29, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member