

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOYCE M. MARSHALL and U.S. POSTAL SERVICE,
POST OFFICE, Sacramento, CA

*Docket No. 00-668; Submitted on the Record;
Issued September 26, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying merit review of the claim.

On September 16, 1992 appellant, then a 41-year-old postal clerk, was sweeping flat cases when she felt a sharp pain in her lower back. She stopped working on October 20, 1992. A January 6, 1993 magnetic resonance imaging scan showed a large herniated disc on the right at L5-S1. Appellant underwent surgery on March 22, 1993 for a hemilaminectomy and discectomy at L5-S1 on the right. The Office accepted appellant's claim for a low back strain and a herniated L5-S1 disc. It paid leave buy back or compensation for the periods appellant did not work from September 25, 1992 through November 26, 1993.

Appellant had intermittent periods of disability thereafter, for which she filed claims for compensation, many of which were paid. On October 31, 1997 appellant filed a claim for disability for October 30, 1997. In a separate note, Dr. D. Beck indicated that appellant had seen a physical therapist for placement of electrodes from a transelectrical neural stimulator and had talked with another physician. In a February 5, 1998 decision, the Office denied appellant's claim for the period October 30 to 31, 1997 on the grounds that the evidence of record failed to establish that she was temporarily totally disabled on October 30, 1997. In a February 4, 1999 letter, appellant's attorney requested reconsideration. In a July 9, 1999 letter, the Office informed appellant and her attorney that it needed medical evidence that showed appellant's physician excused her from work on October 30, 1997 due to her employment injury. The Office gave appellant and the attorney 30 days to submit such evidence. In an August 16, 1999 decision, the Office denied appellant's request for reconsideration on the grounds that substantial legal questions had not been raised in the requests nor had appellant submitted new and relevant evidence.

The jurisdiction of the Board is limited to appeals from final decisions of the Office issued within one year prior to the filing of an appeal.¹ As appellant's appeal was filed on November 19, 1999, the Board only has jurisdiction to consider the Office's August 16, 1999 decision denying appellant's request for reconsideration.

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.² 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.³ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁴ In this case, appellant did not submit medical evidence showing that she was unable to work on October 30, 1997 due to the effects of her accepted employment injury. No legal argument was raised that the Office had erroneously applied or interpreted the law. Appellant's attorney did not present a point of law not previously considered by the Office. Appellant, therefore, did not provide any grounds on which the Office would be required to perform a merit review of its February 5, 1998 decision.

As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.⁵ There is no evidence that the Office abused its discretion in denying appellant's request for reconsideration.

¹ 20 C.F.R. § 501.3(d).

² 20 C.F.R. 10.608(b).

³ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁴ *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

⁵ *Daniel J. Perea*, 42 ECAB 214 (1990).

The decision of the Office of Workers' Compensation Programs, dated August 16, 1999, is hereby affirmed.

Dated, Washington, DC
September 26, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member