

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN P. GREEN and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Memphis, TN

*Docket No. 01-1051; Submitted on the Record;
Issued January 10, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

On March 21, 1990 appellant, then a 39-year-old attendance control supervisor, filed a claim alleging that on March 21, 1990 she was sitting on the commode when it collapsed causing her to fall to the floor and fracture her right leg. The Office accepted appellant's claim for a right leg fracture and paid appropriate compensation. Appellant stopped work on March 21, 1990 and returned to work on November 23, 1990.

Accompanying appellant's claim were emergency room records dated March 21, 1990 and treatment notes from Dr. Ragsdale, a Board-certified orthopedic surgeon, dated May 2 to July 16, 1990. The emergency room records indicated that appellant was being treated for a right leg fracture as a result of a fall at work. The records noted that appellant had a prior history of right knee dislocation in 1987. The treatment notes from Dr. Ragsdale dated May 2 to July 16, 1990 indicated a history of appellant's knee injury and diagnosed a fracture of the distal right femur. He noted that appellant had a previous devastating knee dislocation with peroneal nerve palsy which was resolving.

On November 17, 1990 appellant filed a claim for a schedule award. The Office medical adviser determined that appellant sustained a 48 percent impairment of the right lower extremity. In a decision dated May 1, 1991 appellant was granted a schedule award for a 48 percent permanent loss of the use of the right lower extremity.

Thereafter appellant filed several CA-2a forms, notices of recurrence of disability dated November 30 and December 3, 1992 and February 18, 1993. Appellant indicated that a recurrence of right knee and leg pain causally related to the employment injury of March 21, 1990.

In a decision dated May 7, 1996, the Office accepted appellant's claim for recurrence of disability on or after December 3, 1992.

On November 10, 1998 appellant filed a Form CA-8, claim for continuing compensation, for the period October 23, 1998 through January 15, 1999 alleging that this period of disability was causally related to the March 21, 1990 employment injury.

By letter dated February 2, 1999, the Office requested that appellant submit additional factual and medical evidence to support her claim and afforded her 30 days within which to do so.

In support of her claim, appellant submitted a treatment note from Dr. Ragsdale dated February 24, 1999. He indicated that he has treated appellant for a long period of time for problems relating to her right lower extremity. Dr. Ragsdale indicated that appellant's condition initially began in 1987 with a knee dislocation which resulted in peroneal palsy and foot drop. He noted that appellant had developed significant degenerative joint disease of the knee over the years. Dr. Ragsdale noted that appellant sustained a femur fracture which healed, but indicated that this injury added to the arthritic changes of appellant's knee. He indicated that appellant had to miss certain days between the period October 23, 1998 to January 15, 1999 and that he would "cover her medically for this."

In a decision dated March 30, 1999, the Office denied appellant's claim as the evidence was not sufficient to establish that appellant was disabled from work due to the injury of March 21, 1990.

By letter dated May 7, 1999, appellant requested reconsideration of the decision dated March 30, 1999. Appellant submitted a note from Dr. Ragsdale dated March 31, 1999, indicating that appellant was being referred for a psychological evaluation. Also submitted were two reports from Dr. A. Jean-Pierre, a Board-certified psychiatrist dated April 27 and May 6, 1999. The April 27, 1999 psychological evaluation diagnosed appellant with depression borderline personality features; status post trauma; and psychosocial stressors stemming from her work-related injuries. Dr. Jean-Pierre's May 6, 1999 report noted that appellant was being treated for psychological complications stemming from a pain disorder related to appellant's long-standing accident and quasi incapacitation.

By merit decision dated July 7, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant modification of its prior decision.

In a July 4, 2000 letter, appellant requested reconsideration of her claim. Appellant submitted a May 3, 2000 treatment note from Dr. Ragsdale and a narrative statement. In the May 3, 2000 treatment note, he indicated that appellant had been treated for 14 years beginning with a dislocation of her right knee. Dr. Ragsdale noted that appellant developed traumatic arthritis over the intervening years. He indicated that appellant sustained a distal femur fracture proximal to the knee joint, which aggravated appellant's underlying traumatic arthritis. Appellant's narrative statement set forth a history of her knee and leg condition and the medical treatment she obtained.

By decision dated November 17, 2000, the Office denied appellant's application for review without conducting a merit review on the grounds that the evidence submitted was cumulative in nature and insufficient to warrant review of the prior decision.

The only decision before the Board on this appeal is the Office decision November 17, 2000. Since more than one year elapsed from the date of issuance of the Office's July 7, 1999 merit decision to the date of the filing of appellant's appeal, February 21, 2001, the Board lacks jurisdiction to review this decision.¹

The Board finds that the Office properly denied appellant's request for reconsideration on the merits.²

Under section 8128(a) of the Federal Employees' Compensation Act,³ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,⁴ which provides that a claimant may obtain review of the merits if her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that OWCP 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 OWCP.”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁵

In this case, the Office denied appellant's claim without conducting a merit review on the grounds that the evidence submitted was cumulative and insufficient. In support of her request for reconsideration, appellant submitted a treatment note dated May 3, 2000 from Dr. Ragsdale and a narrative statement. The note indicated that appellant had been treated for 14 years beginning with a dislocation of her right knee. Dr. Ragsdale noted that appellant developed traumatic arthritis over the intervening years. He indicated that appellant sustained a distal femur fracture proximal to the knee joint, which aggravated appellant's underlying traumatic

¹ See 20 C.F.R. § 501.3(d).

² See 20 C.F.R. § 10.606(b)(2) (i-iii).

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b) (1999).

⁵ 20 C.F.R. § 10.608(b).

arthritis. However, this information is cumulative of information already in the record and considered by the Office in its March 30, 1999 decision.⁶ Specifically, Dr. Ragsdale indicated in his report dated February 24, 1999, that appellant's condition initially began in 1987 with a knee dislocation, which resulted in a peroneal palsy and foot drop. He noted that appellant had developed significant degenerative joint disease of the knee over the years. Dr. Ragsdale noted that appellant sustained a femur fracture which healed, but indicated that this injury added to the arthritic changes of appellant's knee. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review. Appellant's narrative statement provided a summary of her work-related injury and subsequent treatment, however, this information has already been established in the record and is insufficient to reopen the case for a merit review.

Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did she submit relevant and pertinent evidence not previously considered by the Office."⁷ Therefore, appellant did not submit relevant evidence not previously considered by the Office.⁸

The November 17, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 10, 2002

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

⁶ 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; *see Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁷ 20 C.F.R. § 10.606(b).

⁸ With her appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).