

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

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**JOYCE B. AYERS, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
White Plains, NY, Employer**

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**Docket No. 04-727  
Issued: July 7, 2004**

*Appearances:*  
*Joyce B. Ayers, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On January 23, 2004 appellant filed a timely appeal from the October 23, 2003 decision of the Office of Workers' Compensation Programs, denying her request for reconsideration without a review of the merits of her claim on the grounds that the information submitted was cumulative, repetitious, irrelevant and immaterial. Because more than one year has elapsed between the last merit decision dated July 24, 2002 and the filing of this appeal on January 23, 2004 the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

**ISSUE**

The issue is whether the Office properly refused to reopen appellant's claim for a further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On April 10, 2001 appellant, then a 52-year-old clerk, filed a traumatic injury claim assigned number 02-2010903, alleging that on April 5, 2001 she suffered from neck and back

spasms with pain radiating down both arms and stress-related aggravation of a previous spinal injury due to performing work that was contrary to her medical restrictions. On April 12, 2001 she filed a traumatic injury claim assigned number 02-2010991, alleging that on April 6, 2001 she experienced the above symptoms. Appellant also alleged that a supervisor had a hostile and insensitive attitude towards her condition. On the same date she filed a traumatic injury claim assigned number 02-2010990, reiterating that she experienced the above symptoms on April 11, 2001 and hostility and sensitivity from a supervisor. In a traumatic injury claim, assigned number 02-2010989 and filed by appellant on April 13, 2001 she reiterated that she experienced pain in the spinal area radiating down her right and left arms on April 12, 2001. Appellant alleged that she was forced to perform tasks on a daily basis that were not ergonomically approved or evaluated. She also alleged that she was subjected to verbal abuse which caused her emotional stress.

In support of her claim, appellant submitted statements dated April 5, 11 and 13, 2001, indicating that since March 28, 2001 and continuing she was being forced to perform tasks that had not been evaluated by an ergonomist. She stated that her doctor had not agreed to reassign her to the computerized forwarding system unit. Appellant noted that the tasks caused increasing neck and back spasms and she was also experiencing sharp pain in the cervical spine area. She stated that the supervisors were constantly hostile towards her and this added stress which exacerbated the pain and spasms in her neck and back. Appellant also submitted leave, employment and medical records.

The employing establishment controverted appellant's claim on the grounds that she was not happy with her rehabilitation job and that two ergonomic evaluations had been performed to meet her needs, finding her able to work with the ergonomic equipment provided. The employing establishment submitted a form indicating that appellant returned to a rehabilitation job on April 11, 2001 and reports regarding her ergonomic evaluation.

By letter dated April 26, 2001, the Office advised appellant that the information submitted in support of her claim for an emotional condition sustained on April 5, 2001 was insufficient to establish her claim. The Office also advised appellant about the type of factual and medical evidence she needed to submit in support of her claim. In a May 4, 2001 letter, the Office advised appellant that the information submitted in support of her claim for the April 12, 2001 injury was insufficient to establish her claim. The Office also advised her about the type of medical evidence she needed to submit in support of her claim.

In response, appellant submitted numerous documents regarding her job duties, previous and current claims, medical treatment and nonwork-related automobile accident. In a June 19, 2001 letter, appellant responded to a telephone message left by an Office representative regarding the status of her claims by stating that her claim should be considered a traumatic injury claim since she began to experience pain on March 28, 2001 when she was forced to work in a cramped area, which aggravated an injury she sustained on March 28, 2001. She further

stated that she subsequently sustained an occupational injury caused by management's everyday abusive and violent conduct, which exacerbated her March 28, 2001 traumatic injury.<sup>1</sup>

By decision dated September 14, 2001, the Office found the evidence of record insufficient to establish that appellant sustained a cervical injury in the performance of duty on April 5, 2001. The Office treated her claim as an occupational disease claim, rather than a traumatic injury claim based on her June 19, 2001 letter. Regarding appellant's allegation that she sustained an emotional condition due to being compelled to perform duties beyond her medical restrictions, the Office stated that she had already raised this contention in a previous claim assigned number 02-2010511, asserting that as of March 28, 2001 she was forced to work in a hostile environment and perform tasks contraindicated by her medical restrictions and that it would not be considered here as it was denied in its decision dated May 18, 2001.<sup>2</sup> The Office further stated that appellant's allegation that she sustained an aggravation of a physical condition due to a hostile work environment was also previously considered in claim number 02-2010511 and that it would not be considered here.

In a separate decision dated September 14, 2001, the Office found that appellant failed to establish that she sustained an injury in the performance of duty on April 12, 2001. The Office determined that her allegation that she sustained a cervical injury because her workstation was not ergonomically suitable was not supported by the record. The Office further determined that the medical evidence of record was insufficient to establish that appellant's injury was caused by factors of her employment. The Office noted that appellant's allegation that she was subjected to a hostile work environment was previously raised in her claim assigned number 02-2010511 and it would not be considered here.

In an October 4, 2001 letter, appellant requested an oral hearing before an Office hearing representative.

By decision dated October 18, 2001, the Office denied appellant's claim assigned number 02-2010991, for a cervical injury sustained on April 6, 2001 and her claim assigned number 02-010990, for a cervical injury sustained on April 11, 2001 on the grounds that they were duplicates of previously filed claims. The Office determined that it would not issue a new decision on the merits of these cases. In an October 29, 2001 letter, appellant requested an oral hearing before an Office hearing representative.

In a July 24, 2002 decision, the hearing representative found the evidence of record insufficient to establish that appellant sustained an injury as a result of work activities that took place over the period April 5 through 12, 2001. The hearing representative adjudicated appellant's claim as an occupational disease claim as she alleged that activities took place over a period longer than a single workday or shift, aggravating her medical conditions of the neck,

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<sup>1</sup> The record reveals that on March 28, 2001 appellant filed a traumatic injury claim assigned number 02-2010511, alleging that on that date she experienced spasms in her neck and shoulders radiating down her arms, which was caused by stress in being forced to work in a hostile environment and perform tasks that contraindicated her medical restrictions.

<sup>2</sup> In its September 14, 2001 decision, the Office noted that its May 18, 2001 decision was pending review by the Branch of Hearings and Review.

back and arms. The hearing representative found that appellant did not submit any evidence to support her allegation that her supervisors acted abusively towards her during the period April 5 through 12, 2001. The hearing representative also found no medical evidence of record establishing that the work activity of processing change of address cards as described by appellant during the May 23, 2002 hearing was caused or contributed to a diagnosed medical condition. Accordingly, the hearing representative affirmed the Office's September 14, 2001 decisions. In addition, the hearing representative modified the Office's October 18, 2001 decision to reflect that appellant's claims assigned numbers 02-2010990 and 02-2010991 were part of one occupational disease claim along with her claims assigned numbers 02-2010903 and 02-2010989. The hearing representative affirmed the decision with respect to the denial of compensation benefits.

In a letter dated July 24, 2003 and received by the Office on July 28, 2003, appellant requested reconsideration citing to her cases assigned numbers 02-2010511, 02-2010903, 02-2010989, 02-2010990 and 02-2010991. She stated: "I am submitting new evidence relevant to these cases and I believe this evidence will affirmatively support my claim."

By decision dated October 23, 2003, the Office denied appellant's request for a merit review of her claim on the grounds that the information submitted was cumulative, repetitious, irrelevant and immaterial. The Office found that appellant failed to submit new or material evidence or to indicate an error in its application of fact or law.

### **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 regulation 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) submit relevant and pertinent new evidence not previously considered by the Office.<sup>4</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>5</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

### **ANALYSIS**

In her July 24, 2003 request for reconsideration, appellant stated that she was submitting "new evidence" relevant to her cases and she "believed this evidence will affirmatively support my claim." She did not submit any new evidence in support of her request for reconsideration.

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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> *Id.* at § 10.607(a).

In addition, she did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office.

**CONCLUSION**

The Board finds that the Office properly refused to reopen appellant's claim for a further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 23, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 7, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member