

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

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**A.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Elmont, NY, Employer**

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**Docket No. 06-784  
Issued: September 1, 2006**

*Appearances:*  
*Paul Kalker, Esq., for the appellant*  
*Office of the Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 10, 2006 appellant filed a timely appeal from a November 16, 2005 Office of Workers' Compensation Programs' nonmerit decision. Because more than one year has elapsed between the last merit decision dated November 5, 2004 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501(c)(2) and 501.3(d)(2).

**ISSUE**

The issue is whether the Office properly refused to reopen appellant's case for reconsideration of his claim under 5 U.S.C. § 8128.

**FACTUAL HISTORY**

Appellant, a 39-year-old letter carrier, injured his lower back while lifting a heavy tray of mail on September 21, 1999. He filed a claim for benefits, which the Office accepted for a lumbar sprain.

On February 8, 2003 appellant filed a Form CA-2a claim for recurrence of disability commencing on February 4, 2003. Appellant noted on the form that he had injured his lower back at home while lifting his girlfriend out of a bathtub.

In a report dated February 4, 2003, Dr. Victor Chehebar, Board-certified in psychiatry and neurology, stated:

“[Appellant] was examined in neurological consultation on February 5, 2003. The patient is a 43-year-old male with a history of lower back injury. He presents today with increasing lower back pains and spasms, shooting pains and numbness traveling from the lower back into both legs. The patient states that his lower back pains have been getting progressively worse. The patient states that his legs ‘gave out’ from underneath him.”

Dr. Chehebar noted findings of paravertebral muscle spasms at L3-4, L4-5 with positive straight leg raising bilaterally at 60 degrees. He stated that a previous magnetic resonance imaging (MRI) scan indicated a central disc herniation at L3-4. Dr. Chehebar diagnosed lumbosacral radiculopathy with symptoms of bladder dysfunction.

By decision dated June 10, 2003, the Office denied appellant’s claim for a recurrence of disability. The Office found that the medical evidence made no reference to the incident at home in which he injured his back lifting his girlfriend from the bathtub. It noted that he did not submit a rationalized medical opinion that the recurrence of disability was due to a worsening of the work-related condition rather than an intervening injury.

In a report dated June 16, 2003, Dr. Chehebar stated that appellant had been complaining of chronic lower back pain with numbness traveling from the lower back into the leg. He stated:

“It is my firm medical opinion that [appellant’s] lower back condition was, in fact, caused by the patient’s work-related trauma and not by the intervening incident at home. Thus, it is felt that as a result of the patient’s work-related injury he is suffering from a lumbosacral radiculopathy, confirmed by electromyelogram and confirmed by [an] MRI [scan].”

On June 24, 2003 appellant requested an oral hearing which was held on July 29, 2004.

By decision dated November 5, 2004, an Office hearing representative affirmed the June 16, 2003 decision.

By letter dated November 2, 2005, appellant’s attorney requested reconsideration. He argued that the Office erred in finding that Dr. Chehebar’s opinion was flawed because he failed to stipulate that appellant’s recurrence was due to work-related factors and not to an intervening cause such as the bathtub incident. Appellant’s attorney contended that, once an inference of causal relationship was asserted, the Office had a duty to request additional information from the treating physician. Appellant submitted results from an August 15, 2005 MRI scan examination which indicated disc degeneration at the L3-4 and L5-S1 levels, some mild spinal stenosis at the L3-4 level, mild disc protrusion at L3-4 and mild central disc bulge at L5-S1.

By decision dated November 16, 2005, the Office denied further merit review on the grounds that appellant did not raise a substantive legal question or submit new and relevant evidence sufficient to require the Office to review its prior decision.

### **LEGAL PRECEDENT**

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.<sup>1</sup> 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.<sup>2</sup>

### **ANALYSIS**

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. Appellant's attorney contended that, once the Office determined that the medical evidence did not contain a sufficient opinion that appellant's recurrence of disability was caused by work factors and not an intervening incident, it had the duty to contact Dr. Chehebar and request additional information. The Office acknowledged in the November 16, 2005 decision that it neglected to send appellant a developmental letter prior to the June 16, 2003 decision. However, appellant retains the burden of proof to submit sufficient medical evidence establishing that his current condition or disability was caused or aggravated by the accepted employment injury. The Office properly noted that any error in not sending a developmental letter was corrected by affording appellant the opportunity to submit additional evidence with his hearing request and to present his case at the July 29, 2004 hearing. The hearing representative gave full consideration to all evidence submitted prior to the issuance of the November 4, 2004 decision. Appellant has not submitted any new medical evidence which addresses the relevant issue of the relationship of his lower back condition to the accepted injury of September 21, 1999. The Board has held that the submission of evidence which does not address the underlying issue involved in the case does not constitute a basis for reopening the claim.<sup>3</sup> The evidence submitted is not relevant to the issue. The August 15, 2005 MRI scan report does not contain a medical opinion pertaining to the issue of whether appellant sustained a recurrence of disability on February 4, 2003. Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

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<sup>1</sup> 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

<sup>2</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

<sup>3</sup> *See David J. McDonald*, 50 ECAB 185 (1998).

**CONCLUSION**

The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 16, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 1, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board