

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

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**PHILIP M. HERRON, Appellant**

**and**

**U.S. POSTAL SERVICE, PROCESSING &  
DISTRIBUTION CENTER, Seattle, WA,  
Employer**

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**Docket No. 04-717  
Issued: May 14, 2004**

*Appearances:*  
*Philip M. Herron, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member

**JURISDICTION**

On January 21, 2004 appellant filed a timely appeal of an Office of Workers' Compensation Programs' decision dated November 7, 2003, which denied merit review. As more than one year has elapsed between the last merit decision of the Office dated November 18, 2002 and the filing of this appeal on January 21, 2004 the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

**ISSUE**

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

**FACTUAL HISTORY**

On July 9, 2001 appellant, then a 41-year-old mail handler, filed a notice of occupational disease alleging that he developed low back pain with sciatica due to lifting in the performance

of his federal duties. The Office accepted appellant's claim for lumbar strain on January 26, 2002.

Appellant filed a claim for compensation on February 8, 2002 requesting compensation from July 7, 2000 to February 8, 2002. By decision dated April 8, 2002, the Office denied appellant's claim for compensation. Appellant requested a review of the written record on May 2, 2002. By decision dated November 18, 2002, the hearing representative affirmed the Office's April 8, 2002 decision.

Appellant requested reconsideration of the November 18, 2002 decision, by letter dated September 30, 2003. Appellant asserted a legal argument that his stress condition was a causal factor in his low back condition. By decision dated November 7, 2003, the Office declined to reopen appellant's claim for consideration of the merits.

### **LEGAL PRECEDENT**

The Office's regulation provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument, which shows that the Office erroneously applied or interpreted a specific point of law, advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>1</sup>

### **ANALYSIS**

In this case, appellant did not submit additional evidence in support of his claim. Instead appellant alleged that his back condition was a consequence of his accepted stress condition. Appellant stated:

"The causal relationship between my work[-]related stress disorder and my low back condition, showing that the low back condition was a consequence of the accepted ongoing stress condition, was substantiated by reasoned medical opinion evidence which I submitted in the report of Dr. [Les] Becker [a family practitioner] dated September 17, 2001. The absence of a rebuttal of this evidence by the Office should raise the presumption that the condition is causally related to my employment."

While appellant has submitted a legal argument, this argument is neither new nor relevant to the issue before the Office at the time of the November 18, 2002 decision. The Office accepted that appellant sustained a low back condition as a result of his federal employment, lumbar strain. However, the Office found that appellant had not established a period of disability due to this accepted condition. Therefore, appellant's argument attributing the back injury to his stress condition accepted in a separate claim, does not address the central issue of whether appellant's lumbar strain resulted in any period of disability. Furthermore, Dr. Becker's September 17, 2001 report was before the Office at the time of the January 26 and November 18, 2002 decisions. The assertion that appellant's lumbar strain was due in part to his stress

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<sup>1</sup> 5 U.S.C. §§ 10.609(a) and 10.606(b).

condition was also reviewed by the Office in the prior decisions. As appellant has failed to submit evidence or argument, which shows that the Office erroneously applied or interpreted a specific point of law; advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office, the Office properly declined to reopen appellant's claim for consideration of the merits on November 7, 2003.

**CONCLUSION**

The Board finds that the Office properly declined to reopen appellant's claim for consideration of the merits as he failed to submit the necessary evidence or argument to warrant review of the merits of his claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 7, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 14, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member