

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

LLOYD A. CRABLE, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Luis Obispo, CA, Employer**

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**Docket No. 05-299
Issued: April 13, 2005**

Appearances:
Lloyd A. Crable, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 15, 2004 appellant filed a timely appeal of nonmerit decisions of the Office of Workers' Compensation Programs dated January 5 and October 14, 2004. As the Office's most recent merit decision was issued on June 13, 2003, the Board, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, lacks jurisdiction to review the merits of this case.¹

ISSUES

The issues are: (1) whether the Office, by its January 5, 2004 decision, properly refused to reopen appellant's case for further review of the merits of his claim; and (2) whether the Office, by its October 14, 2004 decision, properly found that appellant's request for reconsideration was not timely filed and did not demonstrate clear evidence of error.

¹ Section 501.3 requires that an appeal to the Board be filed no later than one year from the date of issuance of the Office's decision.

FACTUAL HISTORY

On October 31, 2002 appellant, then a 58-year-old rural carrier associate, filed a claim for compensation for a traumatic injury to his left hip sustained on September 18, 2002 when he tripped on a curb and struck his left knee on a concrete sidewalk. Appellant's supervisor reported that notice was received on October 31, 2002 and that appellant had not stopped work.

Appellant submitted an October 31, 2002 report from Dr. Christian Voge, a Board-certified family practitioner, that recounted a history of a fall onto the left knee about a month prior, with progressive hip pain beginning three to four days later. Examination revealed tenderness of the greater trochanter and limited motion of the left hip with pain. Dr. Voge diagnosed post-traumatic acute left hip bursitis, and indicated that the findings and diagnosis were consistent with appellant's account of the injury. By letter dated December 2, 2002, the Office advised appellant that the evidence was insufficient to support his claim, because it did not establish that he actually experienced the incident and because his physician did not explain how he came to the conclusion how his injury resulted in the diagnosed hip bursitis.

By decision dated January 9, 2003, the Office found that appellant had not established that he experienced the claimed accident at the time, place and in the manner alleged, and that he failed to provide evidence that he sustained an injury as alleged.

By letter dated February 2, 2003, appellant requested a review of the written record, stating that he was only seeking medical costs necessary to return him to his pre-accident condition. Appellant noted that there were no witnesses to his fall, that he told his supervisor of the trip and fall when he returned to the office, that he declined her invitation to go to the clinic because the only apparent problem was an abrasion on his shin, and that the problem with his hip did not start until almost a week later. Appellant continued that, after a couple of weeks of no improvement with icing and stretching exercises, he realized that his hip condition must have been from the fall, that he talked to his supervisor and followed her advice to have it examined, that bursitis was diagnosed, that he did not require light duty or time off, and that his hip had improved but not completely healed, with his doctor recommending physical therapy.

By decision dated June 13, 2003, an Office hearing representative found that appellant's delay in notification and seeking medical treatment cast serious doubt on whether he sustained an injury as alleged. It was also found that there was no rationalized medical evidence that the September 18, 2002 employment incident caused or aggravated his hip condition, and that the evidence was insufficient to establish that appellant sustained an injury on September 18, 2002 as alleged.

By letter dated December 11, 2003, appellant requested reconsideration, stating that he sustained an injury on the job, that he had no previous problem with his hip joint, and that he delayed in reporting the injury because there was no way to know at first that such a result would come from the fall. Appellant submitted a September 21, 2003 letter he wrote to the employing establishment asking for help with his medical bills relating to his September 18, 2002 fall, in which he stated that his doctor concluded that the bursitis was caused by the trauma from the fall, which made sense since inflammatory problems flare up gradually per his doctor's statement.

By decision dated January 5, 2004, the Office found that because appellant's letter did not raise a substantive legal question and did not include new and relevant evidence, it was insufficient to warrant a review of its prior decision.

By letter dated April 16, 2004, appellant requested reconsideration, and submitted additional evidence. A May 29, 2003 magnetic resonance imaging (MRI) scan of his left hip showed no evidence of acute fracture, dislocation, significant degenerative change or effusion. In a June 9, 2003 report, Dr. Daniel W. Woods, a Board-certified orthopedic surgeon, set forth a history that appellant tripped on a curb in August 2002 landing on his hands and left knee, that he had a gradual onset of pain of his left hip beginning about two weeks later, that he reported this injury to his employer and received medical care about five weeks after the injury, and that bursitis was diagnosed. After reporting findings on examination, Dr. Woods diagnosed trochanteric bursitis to the left hip. Progress reports dated November 12 and December 2, 2002 indicated his hip condition was better with treatment.

By decision dated October 14, 2004, the Office found that appellant's April 16, 2004 request for reconsideration was not timely filed and did not present clear evidence of error.

LEGAL PRECEDENT -- ISSUE 1

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:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2), 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 new 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.

ANALYSIS -- ISSUE 1

Appellant's December 11, 2003 letter requesting reconsideration merely reiterated the points he made in his February 2, 2003 letter, which was considered in the Office hearing representative's June 13, 2003 decision. The December 11, 2003 letter did not show that the Office erroneously applied or interpreted a specific point of law, nor did it advance a relevant legal argument not previously considered by the Office. This letter was not accompanied by any new evidence.

CONCLUSION -- ISSUE 1

As appellant's December 11, 2003 letter did not meet any of the three requirements of 20 C.F.R. § 10.606(b)(2), the Office properly refused to reopen appellant's case for further review of the merits of his claim.

LEGAL PRECEDENT -- ISSUE 2

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, 20 C.F.R. § 10.607(a) provides that "An application for reconsideration must be sent within one year of the date of the [Office] decision for which review is sought." The Board has found that the imposition of this one-year limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).² The Office's procedure manual makes it clear that a right to reconsideration within one year accompanies any merit decision, including a review of the written record decision.³ Under 20 C.F.R. § 10.607(b) the Office will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.

ANALYSIS -- ISSUE 2

In the present case, the most recent merit decision by the Office was its hearing representative's decision issued on June 13, 2003. As appellant's April 16, 2004 request for reconsideration was filed within one year of this merit decision, it was timely filed. The Office improperly reviewed appellant's April 16, 2004 request for reconsideration under the "clear evidence of error" standard of 20 C.F.R. § 10.607 rather than under the "relevant and pertinent new evidence" standard of 20 C.F.R. § 10.606(b)(2).⁴

CONCLUSION -- ISSUE 2

The Board finds that the Office was incorrect in finding that appellant's April 16, 2004 request for reconsideration was not timely filed. The case will be remanded to the Office for consideration of this request, and the evidence accompanying it, under the proper standard.

² *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3 (June 2002).

⁴ *Robbin Bills*, 45 ECAB 784 (1994).

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2004 decision of the Office of Workers' Compensation Programs is affirmed. The October 14, 2004 Office decision is reversed, and the case remanded to the Office for action consistent with this decision of the Board.

Issued: April 13, 2005
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member