

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

J.H, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cincinnati, OH, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 08-317
Issued: July 7, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 13, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 25, 2007 nonmerit decision denying her request for merit review. The Office's last merit decision of record was a June 20, 2006 decision denying appellant's recurrence of disability claim and her claim for a new employment-related occupational disease. Because more than one year has elapsed between the last merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.¹

ISSUE

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

FACTUAL HISTORY

This is the fourth appeal in this case. The Board issued a decision on December 14, 2004 affirming the Office's determination that appellant did not establish that she sustained a

¹ See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

recurrence of total disability on or after October 8, 2001 due to her accepted employment injuries or a new occupational injury prior to October 8, 2001, other than those which had been previously accepted.² In the second appeal, the Board issued a decision on June 8, 2006 setting aside the Office's denial of appellant's claims for a recurrence of total disability on or after October 8, 2001 and for a new occupational injury sustained prior to October 8, 2001.³ The Board found that the Office did not review evidence received prior to the issuance of its November 1, 2005 decision denying appellant's claim, including reports of Dr. Margaret R. Atterbury, an attending Board-certified internist, dated between July 2003 and September 7, 2005. The Board remanded the case to the Office for consideration of this evidence and the issuance of an appropriate decision.

In the third appeal, the Board affirmed the Office's June 20, 2006 decision finding that appellant did not establish that she sustained a recurrence of total disability on or after October 8, 2001 due to her accepted employment injuries and that she did not establish that she sustained a new occupational injury prior to October 8, 2001, other than those which had been previously accepted. The Board found that the Office had properly determined that the new reports of Dr. Atterbury submitted by appellant did not establish her claims. The Board also affirmed the Office's August 25, 2006 decision denying appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).⁴ The facts and circumstances of the case up to that point are set forth in the Board's prior decisions and are incorporated herein by reference.

In a September 27, 2007 letter to the Office, appellant expressed confusion about what action to take on her claim. She stated, however, that she was asking for "an appeal or reconsideration on the decision made on July 3, 2007...."⁵

In a September 12, 2007 report, Dr. Jose O. Martinez, an attending Board-certified physical medicine and rehabilitation physician, indicated that appellant continued to have symptoms in her upper extremities. In a September 7, 2007 report, a physician with an illegible

² Docket No. 04-576 (issued December 14, 2004). In early 1991, the Office accepted that appellant, then a 32-year-old letter sorting machine clerk, sustained left wrist tendinitis, left medial epicondylitis, left trapezius and shoulder strains, left shoulder impingement, myofascial pain syndrome and bilateral carpal tunnel syndrome due to her repetitive job duties. The Office later accepted that appellant sustained right wrist and forearm tendinitis due to her repetitive job duties. In August 1999, she returned to full-time work as a modified general clerk and she stopped work on October 8, 2001 claiming that she sustained a recurrence of total disability due to her accepted employment injuries. On July 22, 2003 appellant filed an occupational disease claim alleging that, at some point, prior to October 8, 2001, she sustained a new upper extremity injury due to her job duties which caused her to stop work on October 8, 2001. In October 20, 1998 and April 9, 2001 decisions, the Office granted appellant a schedule award compensation for a 12 percent permanent impairment of her right arm and a 45 percent permanent impairment of her left arm.

³ Docket No. 06-327 (issued June 8, 2006).

⁴ Appellant filed a petition for reconsideration of the Board's July 3, 2007 decision under 20 C.F.R. § 501.7. In an August 8, 2007 order, the Board denied her petition for reconsideration.

⁵ In July 12, September 9 and 19, 2007 letters, appellant posed questions to the Office regarding her schedule award compensation and requested a list of her accepted employment injuries. The Office responded to appellant's inquiries in several informational letters. It did not issue any new decisions regarding appellant's entitlement to schedule award compensation. The record also contains a September 27, 2007 letter from appellant to the Clerk of the Board concerning her petition for reconsideration.

signature diagnosed bilateral carpal tunnel syndrome and, in an October 8, 2007 report, the same physician discussed appellant's use of medications.

In an October 25, 2007 decision, the Office denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).⁶

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁷ the Office's regulations provide that the evidence or argument submitted by 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) constitute relevant and pertinent new evidence not previously considered by the Office.⁸ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file the application for review within one year of the date of that decision.⁹ According to Office procedure, the right to reconsideration within one year also accompanies any subsequent merit decision on the issues, including any merit decision by the Board.¹⁰ 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 on the merits.¹¹ The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹²

ANALYSIS

In connection with her September 27, 2007 reconsideration request,¹³ appellant submitted a September 12, 2007 report from Dr. Martinez, an attending Board-certified physical medicine and rehabilitation physician, who indicated that she continued to have symptoms in her upper extremities. She also submitted a September 7, 2007 report in which a physician with an illegible signature diagnosed bilateral carpal tunnel syndrome and an October 8, 2007 report in which the same physician discussed her use of medications.

⁶ The Office apparently interpreted appellant's September 27, 2007 letter to the Office as a request for reconsideration of the Office's denial of her claims for an employment-related recurrence of disability and a new employment-related occupational disease.

⁷ 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).

⁸ 20 C.F.R. § 10.606(b)(2).

⁹ 20 C.F.R. § 10.607(a).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3b (June 2002).

¹¹ 20 C.F.R. § 10.608(b).

¹² *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹³ Appellant's reconsideration request would be considered timely because it was filed within one year of the Board's July 3, 2007 decision on the merits. See *supra* note 10 and accompanying text.

However, the submission of these reports does not require reopening of appellant's claim for merit review because they are not relevant to the main issues of the present case.¹⁴ The physicians did not provide an opinion that appellant sustained a recurrence of total disability on or after October 8, 2001 due to her accepted employment injuries or that she sustained a new occupational injury prior to October 8, 2001, other than the previously accepted claims. Appellant also submitted several letters dated in July and September 2007, but these letters do not contain any argument relevant to the main issues of the present case.¹⁵

Appellant has not established that the Office improperly denied her request for further review of the merits of its prior decisions under section 8128(a) of the Act, because the evidence she submitted did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' October 25, 2007 decision is affirmed.

Issued: July 7, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁴ See *supra* note 12 and accompanying text.

¹⁵ In some of the letters, appellant discussed her entitlement to schedule award compensation but this is not a subject of the present appeal.