

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

R.B. Appellant

and

**U.S. POSTAL SERVICE, NATIONAL CAPITAL
STATION, Washington, DC, Employer**

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**Docket No. 10-2130
Issued: June 7, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 19, 2010 appellant filed a timely appeal from a May 19, 2010 nonmerit decision of the Office of Workers' Compensation Programs that denied her request for reconsideration. Because more than 180 days elapsed between the most recent merit decision dated November 18, 2009 and the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of the case but has jurisdiction over the nonmerit decision.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration without further merit review of the claim under 5 U.S.C. § 8128(a).

On appeal, appellant contends that, although her claim was accepted for an injury, she was denied compensation for that injury. She contends that she submitted sufficient medical

¹ 5 U.S.C. § 8101 *et seq.*

evidence for the Office to approve her claim for compensation. Appellant alleges that the Office's denial of her compensation claim has caused her a great deal of hardship.

FACTUAL HISTORY

On October 28, 2008 appellant, then a 48-year-old, filed a traumatic injury claim alleging that on October 27, 2008, while bending over to remove a printer, she sustained injuries to her back and numbness in her legs. She noted that it was painful to walk, sit, stand and lay down. On January 30, 2009 the Office accepted appellant's claim for sprain of the back and lumbar region. Appellant requested compensation from December 12 through 20, 2008 and later filed claims for subsequent periods of compensation. The evidence submitted in support of her compensation claims included April 22, 2008 and April 22, 2009 attending physician's reports by Dr. Sita Krishnamoorthy, appellant's treating Board-certified internist, a May 4, 2009 duty status report, a May 18, 2009 verification of treatment form and physical therapy notes dated April 13 and 15, 2009.

By decision dated June 11, 2009, the Office denied appellant's claim for compensation for the period December 20, 2008 through March 27, 2009. It found that she has not submitted a comprehensive medical report in support of her disability claim.

By letter dated July 14, 2009, appellant requested reconsideration. Additional evidence submitted in support thereof included a May 4, 2009 duty status report and a May 18, 2009 verification of treatment form by Dr. Krishnamoorthy. On November 18, 2009 the Office reviewed appellant's claim on the merits, but denied modification of the prior decision. It determined that, although appellant submitted pertinent new and relevant evidence on reconsideration that was not previously considered by the Office, the evidence did not address the disability elements discussed in the prior decision.

By letter dated April 25, 2010, appellant again requested reconsideration. She reiterated her prior concern that she did not understand how she could have been approved for the injury but denied compensation payments. In support of her claim, appellant submitted some illegible documents which appear to be time and attendance records. In additions she again submitted the April 22, 2008 report by Dr. Krishnamoorthy, with a duty status report dated May 4, 2009; and the May 18, 2009 verification of treatment form. Appellant also resubmitted physical therapy notes dated April 13 and 15, 2009.

By decision dated May 19, 2010, the Office denied appellant's request for reconsideration without further merit review.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act,² 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

² 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).

relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.³ 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.⁴ 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.⁵

ANALYSIS

On appeal, appellant made various arguments concerning the merits of her claim. However, as noted, because more than 180 days elapsed between the most recent merit decision of November 18, 2009 and the filing of this appeal on August 19, 2010, the Board lacks jurisdiction to review the merits of her case.⁶ The only issue before the Board is whether the Office properly denied appellant's reconsideration request.

Appellant did not make any new argument that the Office erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by the Office. Furthermore, she did not submit any pertinent new and relevant evidence with her request for reconsideration. The Board notes that Dr. Krishnamoorthy's April 22, 2008 report, the duty status report of May 4, 2009, the verification of treatment form dated May 18, 2009 and the physical therapy notes dated April 13 and 15, 2009 were all previously in the record and were previously reviewed by the Office. The submission of evidence which repeats or duplicates that already of record does not constitute a basis for reopening a case for merit review.⁷ The time sheets, in addition to being illegible, do not address the issue for which appellant's claim was denied, *i.e.*, that the medical evidence was insufficient to establish disability between December 20, 2008 and March 27, 2009. The Board has held that evidence that does not address the particular issue involved in the case does not constitute a basis for reopening a case.⁸ As appellant has not met any of the requirements for reopening her case for merit review under section 8128(a) of the Act, the Office properly denied reconsideration of her case on the merits.⁹

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *Id.* at §§ 501.2(c) and 501.3(d)(2).

⁷ *See John Polito*, 50 ECAB 347 (1999); *David J. McDonald*, 50 ECAB 185 (1998).

⁸ *D.I.*, 59 ECAB 158 (2007); *Kevin M. Fatzner*, 51 ECAB 407 (2000).

⁹ Appellant may submit new evidence or argument with a written request for reconsideration to the Office within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration without further merit review of the claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 19, 2010 is affirmed.

Issued: June 7, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board