

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

D.K., Appellant)	
)	
and)	Docket No. 10-2260
)	Issued: June 20, 2011
U.S. POSTAL SERVICE, POST OFFICE,)	
Pearl City, HI, Employer)	
)	

Appearances:
Brian Voigt, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 2, 2010 appellant, through her representative, filed a timely appeal from an April 14, 2010 Office of Workers' Compensation Programs' decision denying her reconsideration. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this decision. Because more than 180 days elapsed from the most recent merit decision of February 19, 2009 to the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.

ISSUE

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

FACTUAL HISTORY

On December 8, 2008 appellant, then a 50-year-old letter carrier, filed an occupational disease claim alleging that she came to work on November 24, 2008 and had back pain. She

¹ 5 U.S.C. § 8101 *et seq.*

stated that she told her supervisor and requested to leave early. Appellant noted that she realized the disease was caused or aggravated by her employment on November 24, 2008. She did not work from November 24 to December 7, 2008.

On December 12, 2008 Sheldon Eltagonde, a customer service supervisor, controverted the claim. He noted that appellant informed him that she did not know how she hurt her back. Additionally, Mr. Eltagonde indicated that, while appellant alleged that she had a lot of parcels, the volume records revealed that she did not have a lot of parcels on the dates that she indicated. He provided additional evidence in the form of witness statements, and investigative reports. Appellant's immediate supervisor, Jacob Hookano, provided a statement noting that appellant hurt her back on the previous date, November 23, 2008, a Sunday.

By letter dated December 31, 2008, the Office requested additional evidence. It asked that appellant clarify the events and work activities that she believed contributed to her condition.

On February 16, 2009 the Office received a statement from appellant. Appellant noted that, on the morning of November 24, 2008, she reported to work as usual and began casing. She indicated that, after performing her usual routine, she reached for a cooler and felt a "sharp pain" in her lower left back. Appellant noted that she rested for a few minutes and tried to stretch her back, with no improvement. She explained that she tried sitting and then later resumed casing mail; however, she again experienced pain when reaching for the next cooler. Appellant indicated that she was uncertain of the movement that caused her pain. She stated that she informed her supervisor, Mr. Hookano. Appellant also noted that, when she informed him that she was not feeling well, he seemed dismayed, but managed to retrieve a coworker to empty her case. She indicated that he did not say anything to her when she informed him of her condition. Appellant also confirmed that she did not report her pain as work related because she "had no idea what caused it." She noted that, despite taking medication and resting, her condition persisted and she reported the injury to a supervisor on November 25, 2008.

By decision dated February 19, 2009, the Office denied appellant's claim finding that the factual evidence was insufficient to establish that the claimed incident occurred as alleged.

Appellant continued to submit medical treatment and physical therapy records. These records did not discuss appellant's particular work duties on or about November 24, 2008.

On January 7, 2010 appellant's representative requested reconsideration. He alleged that there was no dispute that appellant sustained and was treated for a strain of the lumbar region. Appellant's representative noted that the only dispute was whether appellant's injury occurred at work on November 24, 2009. He provided a copy of appellant's previously submitted statement. Although appellant's representative indicated that he was providing a statement from appellant's coworker, none was submitted. He also provided medical evidence.

In an April 14, 2010 decision, the Office denied appellant's request for reconsideration finding that the evidence submitted was not sufficient to warrant a review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Act,² the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence which:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office].”³

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁴

ANALYSIS

Appellant disagreed with the Office’s February 19, 2009 decision, which denied her claim for an injury in the performance of duty. The underlying issue on reconsideration was whether she submitted sufficient factual evidence to establish that the claimed work events and factors occurred at the time, place and in the manner alleged. However, appellant did not provide any relevant or pertinent new evidence regarding the time, place and manner in which her claimed back injury occurred at work.

Appellant’s representative requested reconsideration on January 7, 2010. He submitted a copy of her previously submitted statement describing her back injury. However, evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁵ Although appellant indicated that he was providing a statement from a witness, none was received.

Although medical evidence was also received, this evidence is not relevant as the underlying issue is factual in nature; whether the claimed events that contributed to the claimed injury occurred as alleged. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁶ Other evidence submitted by

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b).

⁴ *Id.* at § 10.608(b).

⁵ See *Betty A. Butler*, 56 ECAB 545 (2005).

⁶ *Robert P. Mitchell*, 52 ECAB 116 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Alan G. Williams*, 52 ECAB 180 (2000).

appellant after the February 19, 2009 decision also does not address the employment factors to which appellant attributed her claimed condition.

Appellant did not provide any relevant and pertinent new evidence to establish that she sustained an injury in the performance of duty. Consequently, the evidence submitted by her on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously submitted. Therefore, the Office properly denied her request for reconsideration.

On appeal, appellant's representative alleged that appellant had met her burden of proof to establish an injury in the performance of duty. However, as noted above, appellant did not submit any relevant or pertinent new evidence to establish her claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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