

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

ROBERT H. WILSON, JR., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Milton, MA, Employer**

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**Docket No. 05-1657
Issued: November 7, 2005**

Appearances:
Christine M. Cedrone, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 8, 2005 appellant filed a timely appeal from the May 13, 2005 nonmerit decision of the Office of Workers' Compensation Programs, which denied his January 10, 2005 request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the denial of reconsideration. The Board has no jurisdiction to review the Office's April 11, 2003 or January 15, 2004 merit decisions, denying appellant's claim, as he did not file his appeal within one year of the date of those decisions.

ISSUE

The issue is whether the Office properly denied appellant's January 10, 2005 request for reconsideration.

FACTUAL HISTORY

On September 18, 2002 appellant, then a 54-year-old letter carrier, filed a claim for compensation alleging that his dehydration, hypertension and bilateral leg conditions were a result of his federal employment. In a decision dated April 11, 2003, the Office denied his claim

on the grounds that the evidence was insufficient to establish that any event occurred in his federal employment to cause his condition stating, "You have identified no factors of employment which you believe caused your condition."

Appellant submitted a February 24, 2003 statement of the reason he believed his condition was a result of his job duties. He also submitted a February 27, 2003 report from Dr. Frederick G. Heller, an orthopedic surgeon, who stated: "[Appellant] has been an employee of the employing establishment for approximately 30 years. He has developed degenerative arthritis of both knees which certainly may be a consequence of the repetitive motion that he has experienced over the last 30 years as a postal employee." In an April 8, 2003 report, Dr. Tomas D. Divinagracia, a general surgeon, reported that appellant was totally disabled for work as a mailman, as he suffered from chronic venous insufficiency with chronic edema of both legs and a well-documented history of recurrent infections and ulcerations of both lower legs requiring numerous hospitalizations. He stated: "The physical requirements of [appellant's] job over the past 30 years has caused the present disabling condition he is in now." On July 31, 2003 Dr. Divinagracia added: "Upon further review of [his] history, I am of the opinion that his employment has directly caused the recurrent bouts of cellulitis and lymphedema of appellant's lower legs." On October 10, 2003 appellant requested reconsideration.

In a decision dated January 15, 2004, the Office reviewed the merits of appellant's claim. The Office found that, although he had sufficiently identified the factors of his employment to which he attributed his condition, the medical opinion evidence was insufficient to establish causal relationship. The Office found that none of the physicians had explained with medical rationale how appellant's employment contributed to or caused his condition. Further, none of the physicians had described the specific employment activities they felt contributed to his condition. The Office, therefore, denied appellant's claim for failure to establish causal relationship.

On January 10, 2005 appellant requested reconsideration. He submitted the December 11, 2004 report of Dr. Alfred Ian Lee, a specialist in internal medicine, who stated:

"This letter is to document that [appellant] suffers from severe pathology of both of his knees. Imaging studies demonstrate significant degeneration of both of his knee joints. [Appellant's] knee pathology is so severe that it greatly compromises the extent of his level of activity. It is likely that such extensive disease progression has been exacerbated by chronic physical exertion."

In a decision dated May 15, 2005, the Office denied appellant's request for reconsideration. The Office found that Dr. Lee's report was substantially similar to other reports previously considered and contained the same deficiencies, insofar as he reported a conclusion without providing medical rationale and did not address how the diagnosed condition was exacerbated by appellant's employment as a letter carrier. The Office found that he did not submit relevant and pertinent evidence not previously considered.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.¹ The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."²

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.³

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.⁴ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁵

ANALYSIS

Appellant's January 10, 2005 request for reconsideration was timely filed within one year of the Office's January 15, 2004 merit decision, denying his claim for failure to establish causal relationship. The question for determination is whether the January 10, 2005 request entitles him to a merit review of his claim under one of the three standards set forth in the Office regulations.

To support his request, appellant made no attempt to show that the Office erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by the Office. He is, therefore, not entitled to a merit review of his claim under the first two standards. Instead, he submitted the December 11, 2004 report of Dr. Lee, who stated that it was likely the significant degeneration of both of appellant's knee joints was exacerbated by chronic physical exertion. This evidence, while new, is not relevant or pertinent because it did nothing to address the deficiencies in his claim, as described in the Office's

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.605 (1999).

³ *Id.* § 10.606.

⁴ *Id.* § 10.607(a).

⁵ *Id.* § 10.608.

January 15, 2004 decision. The Office denied compensation for two reasons: none of the physicians had identified any specific employment activity and none had explained with any rationale how a specific employment activity caused or contributed to appellant's diagnosed condition. Dr. Lee's report did not mention his federal employment, much less any particular duty or physical activity he performed as a letter carrier. The report made no attempt to explain the physical process by which chronic physical exertion would exacerbate a degenerative knee condition. This new evidence did not address the particular issue involved and does not constitute a basis for reopening the claim.⁶ Appellant is, therefore, not entitled to a merit review of his claim under the third standard.

Because appellant's January 10, 2005 request for reconsideration failed to meet at least one of the three standards for obtaining a merit review of his case, the Board finds that the Office properly denied his request. The Board will affirm the Office's May 13, 2005 decision.

CONCLUSION

The Board finds that the Office properly denied appellant's January 10, 2005 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

⁶ *E.g., Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).