

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

JOSEPHINE HOLLOMAN-ADAMS, Appellant)	
)	
and)	Docket No. 06-327
)	Issued: June 8, 2006
U.S. POSTAL SERVICE, POST OFFICE,)	
Cincinnati, OH, Employer)	
)	

Appearances:
Josephine Holloman-Adams, pro se
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 November 22, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' November 1, 2005 nonmerit decision denying her request for further merit review of her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this nonmerit decision. The last merit decision of the Office was the December 10, 2003 decision denying appellant's claim that she sustained a new occupational injury prior to October 8, 2001, other than those which had been previously accepted.

Because more than one year has elapsed between the last merit decision and the filing of this appeal on November 22, 2005, 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 of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This is the second appeal in this case. The Board issued a decision on December 14, 2004 affirming 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.²

On January 25, 1991 appellant, then a 32-year-old letter sorting machine clerk, filed an occupational disease claim, alleging that she sustained upper extremity injuries beginning in November 1990 due to repetitive typing and the handling of mail. The Office accepted that she sustained left wrist tendinitis, left medial epicondylitis, left trapezius and shoulder strains, left shoulder impingement, myofascial pain syndrome and bilateral carpal tunnel syndrome. Appellant received compensation for intermittent periods of partial and total disability. On September 3, 1991 she filed an occupational disease claim alleging injury to her right upper extremity. The claim was accepted for right wrist and forearm tendinitis. In June 1999, appellant returned to full-time work as a modified general clerk.³ Appellant stopped work on October 8, 2001 and claimed that she sustained a recurrence of total disability due to her accepted employment injuries. In several decisions, the Office denied 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, 2001.⁴ The facts and the circumstances of the case are set forth in the Board's prior decision and are incorporated herein by reference.

By letter dated June 10, 2005, appellant requested reconsideration of her claim. She argued that the medical evidence of record established that she was entitled to additional

¹ See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2). See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2). The record contains a December 14, 2004 Board decision denying appellant's claims for a recurrence of total disability and a new occupational injury. In the absence of further review by the Office on the issues addressed by the decision, the subject matters reviewed are *res judicata* and are not subject to further consideration by the Board. 5 U.S.C. § 8128; *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998). Appellant did not seek reconsideration of the Board's decision pursuant to 20 C.F.R. § 501.7(a). A decision of the Board is final upon the expiration of 30 days from the date of the decision. 20 C.F.R. § 501.6(d).

² Docket No. 04-576 (issued December 14, 2004).

³ The files for appellant's multiple claims have been combined in the present case file.

⁴ The Office granted appellant schedule awards for a 12 percent permanent impairment of her right arm and a 45 percent permanent impairment of her left arm. By decision dated June 24, 2003, the Office determined that appellant was not entitled to any additional schedule award compensation.

disability and schedule award compensation from the Office. Appellant also asserted that delays in the handling of her claim had prejudiced the outcome of her case.

In support of her reconsideration request, appellant submitted several reports of Dr. Margaret R. Atterbury, an attending Board-certified internist. These reports were dated July 29 and September 9, 2003, February 17, June 8, August 17, November 9 and December 29, 2004, February 23, May 6 and September 7, 2005.⁵ Dr. Atterbury diagnosed bilateral shoulder tendinitis, epicondylitis, wrist tendinitis and carpal tunnel syndrome. In each report, she indicated that these conditions were ongoing and precipitated by appellant's past work at the employing establishment.

By decision dated November 1, 2005, the Office denied appellant's request for further merit review of her claim. The Office determined that appellant's submission of the June 10, 2005 reconsideration letter did not require reopening of her claim and stated, "The only evidence received with your request for reconsideration was your letter of June 10, 2005." The Office did not acknowledge or discuss the submitted reports of Dr. Atterbury.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁶ 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.⁷ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.⁸ 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.⁹

The Act provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim.¹⁰ Since the Board's jurisdiction of a case is limited to reviewing that evidence which is before the Office at the time of its final decision,¹¹ it is necessary that the Office review all

⁵ These reports were not previously submitted to the Office.

⁶ 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).

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ 20 C.F.R. § 10.607(a).

⁹ 20 C.F.R. § 10.608(b).

¹⁰ 5 U.S.C. § 8124(a)(2).

¹¹ See 20 C.F.R. § 501.2(c).

evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed,¹² it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.¹³

ANALYSIS

The Office accepted that appellant sustained numerous upper extremity conditions, including tendinitis, epicondylitis, trapezius and shoulder strains, myofascial pain syndrome, shoulder impingement and carpal tunnel syndrome. The Board issued a decision on December 14, 2004 affirming the Office's determinations 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. By decision dated November 1, 2005, the Office denied appellant's June 2005 request for further merit review of her claim.

The Board finds that Office did not review evidence received prior to the issuance of its November 1, 2005 decision. The record contains reports of Dr. Atterbury, an attending Board-certified internist. In its November 1, 2005 decision, the Office stated, "The only evidence received with your request for reconsideration was your letter of June 10, 2005." It did not acknowledge receipt of the submitted reports of Dr. Atterbury.¹⁴ However, in connection with her June 2005 reconsideration request appellant submitted reports of Dr. Atterbury dated July 29 and September 9, 2003, February 17, June 8, August 17, November 9 and December 29, 2004, February 23, May 6 and September 7, 2005.¹⁵

The Board will set aside the November 1, 2005 decision and remand the case so that the Office may fully consider the evidence that was properly submitted by appellant prior to the issuance of this decision. Following such further consideration and after such further development as it deems necessary, the Office shall issue an appropriate decision.

CONCLUSION

The Board finds that the Office improperly failed to consider evidence appellant submitted in connection with her request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a). The case should be remanded to the Office for further consideration of this evidence.

¹² 20 C.F.R. § 501.6(c).

¹³ *William A. Couch*, 41 ECAB 548, 553 (1990).

¹⁴ The Office indicated that that appellant's submission of the June 10, 2005 reconsideration letter did not require reopening of her claim.

¹⁵ In these reports, which were not previously submitted to the Office, Dr. Atterbury diagnosed ongoing bilateral shoulder tendinitis, epicondylitis, wrist tendinitis and carpal tunnel syndrome and stated that the conditions were related to appellant's federal work.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' November 1, 2005 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: June 8, 2006
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