United States Department of Labor
Employees' Compensation Appeals Board

S.J., Appellant	)	
and	)	**Docket No. 06-2088**
	)	**Issued: January 22, 2007**
U.S. POSTAL SERVICE, ATLANTA PROCESSING & DISTRIBUTION CENTER, Atlanta, GA, Employer	)	

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 7, 2006 appellant filed a timely appeal of the June 5, 2006 nonmerit decision of the Office of Workers' Compensation Programs. The latest merit decision in the case is dated May 23, 2005. Because appellant filed her appeal more than a year after the last merit decision, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board does not have jurisdiction over the merits of the claim. Therefore, the only decision properly before the Board is the Office's June 5, 2006 nonmerit decision denying reconsideration.

ISSUE

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

FACTUAL HISTORY

On June 5, 2003 appellant, then a 34-year-old clerk, filed an occupational disease claim, Form CA-2, alleging back pain. Appellant stated that she had persistent back pain during and

after work because her duties required her to lift trays of mail. She alleged that her doctor informed her that her back pain was related to the type of work she did. Appellant first became aware of the condition on May 1, 2000 and realized that it was caused by her employment on June 4, 2003. The employing establishment controverted her claim on the grounds that she had not provided any medical documentation indicating the nature of her condition or that she sustained a work-related injury.

By letter dated July 7, 2003, the Office requested additional information about appellant's claim. The information requested was based on the assumption that appellant had filed a claim for a traumatic injury rather than an occupational disease. Appellant did not provide the requested information in the allotted time.

By decision dated September 2, 2003, the Office denied appellant's claim on the grounds that she had provided no information about the alleged employment injury. It found that appellant had proved neither the occurrence of an event or exposure that caused an injury nor that she had a medical condition connected to the alleged event.

On October 2, 2003 appellant requested an oral hearing to review the Office's decision.

By decision dated March 30, 2004, an Office hearing representative found that the case was not in posture for a hearing. The hearing representative vacated and remanded the Office's September 2, 2003 decision on the grounds that the Office had not properly advised appellant of the deficiencies in her claim. The hearing representative found that the Office requested that appellant provide information about a traumatic injury rather than an occupational disease related to lifting trays at work. The hearing representative ordered the Office to properly advise appellant and then conduct a *de novo* review of her case.

The Office complied with the hearing representative's order and, on April 16, 2004, requested that appellant provide medical evidence proving a diagnosed back condition and its relation to her federal employment. Appellant did not provide the requested information in the allotted time.

By decision dated May 20, 2004, the Office denied appellant's claim on the grounds that she had not provided any medical evidence proving that she had a diagnosed back condition or that the alleged injury was caused by her employment.

On May 18, 2005 appellant filed a request for reconsideration with the Office. As grounds for reconsideration, appellant provided a written statement and over 150 pages of medical records documenting treatment of her back from April 27, 2000 to December 3, 2004, including treatment records, diagnostic reports and physical therapy reports.

On May 23, 2005 the Office issued a decision denying modification of its May 20, 2004 decision on the grounds that appellant had not provided any medical opinion evidence that her employment was causally related to her diagnosed back condition. It found that the medical evidence proved appellant's diagnosis of lumbar degeneration caused by a herniated nucleus between L-2 and L-3. The Office went on to find, however, that the medical evidence was not sufficient to prove a causal relationship between appellant's condition and her federal employment.

On May 18, 2006 appellant requested reconsideration of the Office's May 23, 2005 denial on the basis of new medical evidence. The record indicates that no new evidence was submitted with the request for reconsideration.

By decision dated June 5, 2006, the Office denied appellant's request for reconsideration on the grounds that she did not submit any new medical evidence. It also noted that appellant had raised no previously unconsidered legal contentions.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act, the Office has the discretion to reopen a case for review on the merits.[1] Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (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 Office.[2] Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[3]

ANALYSIS

The Board finds that appellant met none of the regulatory requirements for a review of the merits of the Office's May 23, 2005 decision. Appellant's May 18, 2006 request for reconsideration did not allege that the Office erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument not previously considered by the Office. Appellant is thus not entitled to further review on the merits of her case under the first two sections of 10.606(b)(2).[4] Additionally, though appellant stated that new medical evidence was the basis for reconsideration, she did not submit anything with her May 18, 2006 request. As there was no relevant and pertinent new evidence for the Office to consider, appellant was not entitled to review under the third section of 10.606(b)(2).[5]

Because appellant did not meet any of the statutory requirements for a review of the merits of her claim, the Office properly denied the May 18, 2006 request for reconsideration.

[1] 5 U.S.C. § 8128(a).

[2] 20 C.F.R. § 10.606(b)(2).

[3] *Id*. at § 10.608(b).

[4] *Id*. at § 10.606(b)(2)(i) and (ii).

[5] *Id*. at § 10.606(b)(2)(iii).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 5, 2006 is affirmed.

Issued: January 22, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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