United States Department of Labor
Employees' Compensation Appeals Board

W.H., Appellant	)	
and	)	**Docket No. 07-813**
	)	**Issued: July 5, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Hixson, TN, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 5, 2007 appellant filed a timely appeal from the February 7, 2006 nonmerit decision of the Office of Workers' Compensation Programs, which denied his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this denial. The Board has no jurisdiction to review the merits of the denial of his claim for compensation, as he did not file this appeal within one year of the date of those decisions.

ISSUE

The issue is whether the Office properly denied appellant's December 12, 2005 request for reconsideration.

FACTUAL HISTORY

On September 25, 2003 appellant, then a 40-year-old distribution clerk, filed a claim alleging that he sustained a traumatic injury that day: "Lifting of heavy tubs. Felt extreme pain

and tightening in lower back. Got worse as time went on."[1] He stopped work that day and sought medical attention. Appellant was diagnosed with low back pain and muscle spasm.

In a November 10, 2003 statement, appellant described what happened, as follows:

"On September 25, 2003 I reinjured my back in the following manner.

"I clocked in at my normal 5:00 a.m. time and proceeded to the workroom floor. We started pulling in the mail which was to be processed. The mail containers were filled with approximately 300 to 600 pounds of mail. The container I was working out of had mail tubs that were filled with magazines weighing approximately 30 to 60 pounds each. In order to process these magazines, I had to lift the tubs out of the container and place them on a trash can for leverage. I was doing this for about an hour and 45 minutes when all of sudden I felt a severe sharp pain in my lower back. Thinking it was perhaps a muscle spasm I continued to work thinking it would subside. As I continued the pain worsened.

"I sat down hoping that would ease the pain but to no avail. As I stood up I dropped a subscription card out of magazine. Instead of bending down, I thought I would get down on my knees and reach for it that way, thinking it would help ease the pain. While on my knees I reached for the card and the most excruciating pain shot through my back. It was so painful it was paralyzing and momentarily I could not move.

"Finally, I was able to pull myself up by grabbing onto a flat case. I informed the supervisor that I needed medical attention and proceeded on to the doctor."

In a decision dated November 17, 2003, the Office denied appellant's claim for compensation. The Office found that the evidence was insufficient to establish that the events occurred as alleged. The Office further found no medical evidence providing a diagnosis that could be connected to the claimed events.

A December 4, 2003 unsigned medical report noted appellant's history of low back pain and stated: "Apparently, in September 2003, he was reinjured at work…." He was diagnosed with degenerative arthritis of the lumbar spine and chronic lumbar strain.

In a decision dated February 18, 2004, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office found that the unsigned medical report described no specific incident of injury.

On February 25, 2004 Dr. Michael D. Gaither, appellant's internist, addressed the alleged injury:

"[Appellant] is a regular patient of mine and has been since September 12, 2002. I began treating [him] in reference to his low back pain. He contacted my office

[1] The record indicates that appellant had a previous back injury.

> on September 25, 2003, in reference to reinjuring his back at work after lifting mail and seen in my office that same day. Because of the findings, I recommended physical therapy. However, this treatment was never initiated because it was not approved by workers' [c]ompensation. I then reported [appellant] to the Chattanooga Orthopedic Group, where he saw Dr. [S. Craig] Humphreys in reference to this persistent lower back pain. It is my professional opinion that [appellant] did sustain an injury at work on September 25, 2003. As a result of this reinjury, [he] has missed numerous days of work and the injury may cause him to intermittently miss days at work."

In a decision dated April 7, 2004, the Office reviewed the merits of appellant's case and denied modification of its prior decision. The Office found that Dr. Gaither's narrative report contained no diagnosis.

On May 12, 2004 Dr. Humphreys, the consulting Board-certified orthopedic surgeon, noted that appellant initially injured his back in 2001. "This resolved," he stated: "and he again suffered another injury again in September 2003 while lifting at work. I feel this is a work-related injury." On July 21, 2004 Dr. Humphreys diagnosed degenerative arthritis of the lumbar spine and partial L4-5 disc desiccation and tiny annular tear. On October 6, 2004 he reported a five percent impairment of the body as a whole.

In a decision dated September 15, 2005, the Office reviewed the merits of appellant's case and modified its prior decision. The Office found the evidence sufficient to establish that something did occur at work as alleged but insufficient to establish that this caused an injury: "The medical evidence either discusses your prior 2001 injury or describes your having degenerative disc disease and pain but does not link this to either being caused or affected in any way to the September 2003 incident."

On December 12, 2005 appellant requested reconsideration and he submitted a December 7, 2005 report from Dr. Humphreys, who stated:

> "As you are aware, [appellant] is a patient of mine. I am an orthopaedic spine surgeon. On October 6, 2004 I issued [appellant] an impairment rating of [five] percent I based this on the [American Medical Association, *Guides to the Evaluation of Permanent Impairment*] fifth [e]dition, DRE [diagnosis-related estimate] level 3. It is my opinion that this rating of five percent is directly related to the September 25, 2003 work[-]related injury."

In a decision dated February 7, 2006, the Office denied appellant's request for a reconsideration of his claim. The Office found that Dr. Humphreys' December 7, 2005 report to be repetitious. The Office also found that an impairment rating does not prove that the condition is work related.

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.[2] 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."[3]

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.[4]

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.[5] 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.[6]

ANALYSIS

Appellant's December 12, 2005 request for reconsideration does not show that the Office erroneously applied or interpreted a specific point of law, nor does it advance a relevant legal argument not previously considered by the Office. He submitted Dr. Humphreys' December 7, 2005 opinion that a five percent permanent impairment was directly related to the September 25, 2003 work injury. The Board finds that this evidence does not constitute relevant and pertinent new evidence not previously considered by the Office.

The underlying issue in appellant's case is whether the events that took place at work on September 25, 2003 caused or aggravated any diagnosed medical condition. Appellant has submitted a detailed description of what happened that day and the Office has accepted that he experienced the incidents as alleged. The Office denied his claim because no physician provided a narrative opinion demonstrating familiarity with appellant's account of events and soundly

[2] 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.605 (1999).

[4] *Id*. at § 10.606.

[5] *Id*. at § 10.607(a).

[6] *Id*. at § 10.608.

explaining how the September 25, 2003 incident caused or aggravated a specifically diagnosed medical condition. Without this well-reasoned medical opinion on causal relationship, based on a proper factual and medical background, the Office found that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on September 25, 2003.

The issue in appellant's case has nothing to do with impairment under the A.M.A., *Guides* (5th ed. 2001). This evidence of impairment is irrelevant. Although Dr. Humphrey obtained a history of a September 25, 2003 work-related injury, this is precisely what appellant has not established; that the events which occurred on September 25, 2003 caused or aggravated a particular medical condition. The Board finds that the evidence submitted to support appellant's December 12, 2005 request for reconsideration is irrelevant and, therefore, insufficient to warrant a reopening of his case for a review on its merits.

As appellant's request does not meet at least one of the standards for obtaining a merit review of his case, the Board will affirm the Office decision denying that request.

CONCLUSION

The Board finds that the Office properly denied appellant's December 12, 2005 request for reconsideration. He is not entitled to a reopening of his case.

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 5, 2007
Washington, DC

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

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

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