



## **FACTUAL HISTORY**

On July 31, 2002 appellant, then a 40-year-old letter carrier, filed a traumatic injury claim alleging that she injured her lower back on July 29, 2002 while delivering mail. She fell backward off a porch when a dog jumped at her from an open doorway. The Office accepted appellant's claim for a contusion, low back strain, neck strain and left wrist strain.

By decision dated May 3, 2004, the Office denied appellant's claim for a recurrence of disability as of May 13, 2003 on the grounds that the medical evidence was not sufficient to establish that her recurrence of disability was causally related to her July 29, 2002 employment injury. By decision dated February 22, 2005, the Office denied appellant's request for a review of the written record. By decision dated July 20, 2005, the Office denied modification of the May 3, 2004 decision.

Appellant requested reconsideration and submitted additional evidence.

In a September 5, 2005 letter, a supervisor stated that appellant had mentioned planning to dig up flower bulbs at a plant nursery. Appellant had also recently painted and sandblasted her swimming pool. She had taken leave when she was splitting logs and injured her foot. The supervisor stated that she did not witness the work performed and did not know whether appellant performed the work herself or hired someone. Appellant submitted an affidavit indicating that she was unable to perform the heavy yard work described by the supervisor. She also submitted an affidavit in which an individual stated that he had performed the yard work for her.

Appellant also submitted evidence previously of record.

By decision dated September 14, 2006, the Office denied appellant's request for reconsideration on the grounds that the evidence was not sufficient to warrant further merit review.

## **LEGAL PRECEDENT**

Section 8128(a) of the Federal Employees' Compensation Act<sup>3</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

---

<sup>3</sup> 5 U.S.C. § 8128(a).

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.<sup>4</sup> When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>5</sup>

### ANALYSIS

The merits of the Office's denial of appellant's recurrence of disability claim are not within the jurisdiction of the Board on this appeal. Therefore, the only issue is whether the evidence submitted by appellant with her request for reconsideration was sufficient to warrant further merit review.

Appellant submitted affidavits refuting a supervisor's suggestion that she may have performed heavy yard work at home that was inconsistent with her claim of a recurrence of disability. However, the May 3, 2004 decision denying her recurrence of disability claim was based on the medical evidence. The evidence submitted by appellant does not address the medical issue involved in the case, whether she sustained a recurrence of disability on May 13, 2003 causally related to her accepted medical conditions resulting from her July 29, 2002 employment injury.

Appellant also submitted evidence previously of record. Evidence previously of record does not constitute relevant and pertinent evidence not considered previously by the Office.<sup>6</sup>

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or submit relevant and pertinent evidence not considered previously by the Office. Therefore, the Office properly denied her claim.

### CONCLUSION

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

---

<sup>4</sup> 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> *Id.* at § 10.608(b).

<sup>6</sup> See *Freddie Mosley*, 54 ECAB 255 (2002) (evidence that repeats or duplicates evidence already of record does not constitute a basis for reopening a claim for further merit review).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 14, 2006 is affirmed.

Issued: May 11, 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