

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

L.D., Appellant

and

**U.S. POSTAL SERVICE, Cumming, GA,
Employer**

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**Docket No. 07-1293
Issued: September 25, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 13, 2007 appellant filed a timely appeal of the February 20, 2007 nonmerit decision of the Office of Workers' Compensation Programs which denied reconsideration and a December 12, 2006 merit decision which denied her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly denied appellant's reconsideration request; and (2) whether appellant sustained a traumatic injury while in the performance of duty on October 16, 2006.

FACTUAL HISTORY

On October 26, 2006 appellant, then a 35-year-old rural carrier, filed a traumatic injury claim alleging that on October 16, 2006 she injured her left shoulder while picking up and lifting a tray of mail to put in the motor vehicle. Two return to work notes dated October 24 and 25, 2006 from Dr. Folsom Proctor, an orthopedic surgeon, were received by the Office. In an

October 30, 2006 note, appellant's supervisor stated that on October 18, 2005 appellant informed the supervisor that her shoulder hurt.

On November 1, 2006 the Office requested additional factual and medical information from appellant. Appellant did not respond. The Office received a November 13, 2006 evaluation report from a physical therapist.

On December 12, 2006 the Office denied appellant's claim on the grounds that the medical evidence was insufficient to support her claim as the only report was from a physical therapist not a physician.

On February 5, 2007 appellant requested reconsideration. The Office received additional information on December 26, 2006. A December 15, 2006 magnetic resonance imaging (MRI) scan report of the cervical spine revealed degenerative changes at C5-6 and C6-7 and an MRI scan report of the same date of the left shoulder was unremarkable.

On February 20, 2007 the Office received a packet of medical reports which had initially been submitted to the employing establishment's injury compensation office. The Office received reports from Dr. Proctor dated November 9, 2006 to January 8, 2007. In the November 9, 2006 report, Dr. Proctor stated that appellant had left shoulder and neck pain due to lifting mail trays. In the December 19, 2006 report, Dr. Proctor found tenderness over the trapezius and mild amount of degenerative stenosis at the C5 level. On January 8, 2007 Dr. Proctor opined that appellant could return to work full duty without restrictions. Visit reports from a nurse practitioner dated October 18 and 24, 2006 were also received.

On February 20, 2007 the Office issued a nonmerit decision denying appellant's reconsideration request. The Office stated that the only medical evidence received in support of the request for reconsideration were MRI scan reports and a report from Dr. Proctor dated January 8, 2007. The Office concluded that these reports were not new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

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 which: (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

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.606(b)(2).

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

The Act provides that the Office shall determine 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. Since the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision, it is necessary that the Office review all 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, it is critical that the Office address all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision.⁴ The Board has held that this principal applies with equal force when evidence is received by the Office the same day a final decision is issued.⁵ As the Board's decisions are final as to the subject matter appealed, it is critical that the Office review all newly received evidence relevant to that subject matter prior to the time of issuance of its final decision.⁶

ANALYSIS -- ISSUE 1

Appellant requested reconsideration of the Office's denial of her claim on February 5, 2007. She submitted medical evidence in support of this request, which was received by the Office on February 20, 2007, the same day the Office issued a nonmerit decision denying appellant's request for reconsideration. The Board finds that medical evidence related to appellant's claim was received but not reviewed by the Office prior to its rejection of appellant's request for reconsideration. Therefore, in accordance with Board precedent,⁷ the case must be remanded for a proper review of the evidence and an appropriate final decision on appellant's request for reconsideration.⁸

CONCLUSION

The Board finds that this case is not in posture for a decision. The Board finds that the Office failed to review all of the relevant evidence in this case related to appellant's request for reconsideration. The Board therefore remands the case for a review of the evidence and issuance of an appropriate final decision.

³ 20 C.F.R. § 10.608(b).

⁴ *William A. Couch*, 45 ECAB 548 (1990).

⁵ *Linda Johnson*, 45 ECAB 439 (1994).

⁶ *William A. Couch*, *supra* note 4.

⁷ *Linda Johnson*, *supra* note 5.

⁸ As the case is remanded for further review by the Office the Board will not review the merits at this time.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 20, 2007 is set aside and remanded for further action consistent with this decision.

Issued: September 25, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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