

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

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**G.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Benton Harbor, MI, Employer**

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**Docket No. 07-1295  
Issued: September 26, 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 16, 2007 appellant filed a timely appeal of a December 1, 2006 nonmerit decision of the Office of Workers' Compensation Programs denying her request for reconsideration. As the most recent Office merit decision was issued on January 11, 2006 more than one year prior to the filing of this appeal, the Board does not have jurisdiction over the merits of the case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUE**

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On April 14, 2003 appellant, then a 60-year-old modified distribution and window clerk, filed an occupational disease claim alleging that she sustained a pulmonary and emotional condition as a result of her federal duties. She alleged that, when she reported to work at 9:30 a.m., the sorting machine was about ready to be cleaned. Appellant noted that it was cleaned by

using a dry vacuum cleaner which blew dirt into the open air, making her choke, cough and sneeze, thereby, leaving her physically and mentally overwhelmed. The employing establishment controverted the claim.

By decision dated September 8, 2003, the Office denied appellant's claim for both a pulmonary and emotional condition. It found that the evidence was insufficient to establish that the events and/or exposure occurred as alleged. The Office noted that appellant submitted no air test reports demonstrating that there was a higher than normal amount of dust or asbestos in the air and that the employing establishment had submitted statements that the letter sorting machines are not harmful to workers. The employing establishment further indicated that there had been an inspection in 1992 for asbestos and that it passed with no difficulty. The claim was further denied with regard to appellant's alleged pulmonary condition for the reason that no physician provided a rationalized opinion that any of appellant's breathing difficulties were due to any of the claimed events. With regard to her emotional condition claim, the Office found that appellant had not established that any of the alleged work factors or incidents had occurred.<sup>1</sup> Subsequent requests for reconsideration were submitted and by decisions dated April 8 and November 5, 2004 the Office denied the requests after reviewing the claim on the merits. In both decisions, the Office noted that appellant had not provided evidence sufficient to establish that the alleged events occurred. Appellant subsequently appealed to the Board.

On April 20, 2005 the Board dismissed the appeal at appellant's request, so that she could pursue reconsideration before the Office.<sup>2</sup>

On October 28, 2005 appellant again requested reconsideration. By decision dated January 11, 2006, the Office denied modification of its prior decisions.

On November 3, 2006 appellant requested reconsideration. She reiterated her allegation that she was exposed to daily cleaning of a carrier sorter only a few feet from her workstation. Appellant submitted a September 17, 2003 medical report from Dr. Paul J. Guentert, a pulmonologist, who indicated that appellant had emphysematous changes in her lung, consistent with either lymphangioliomyomatosis or possibly eosinophilic granuloma. Dr. Guentert noted that either of these conditions could have been exacerbated by appellant's workplace exposure. In a July 30, 2004 report, he indicated that appellant's respiratory status was made worse by dust exposure at her workplace. Appellant also submitted numerous articles and letters from periodicals with regard to on the job asthma, interstitial lung disease, mold and lung disease and ringing ears as a result of a school siren.

In a decision dated December 1, 2006, the Office denied appellant's request for reconsideration without reviewing the merits of appellant's claim.

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<sup>1</sup> Specifically, the Office denied that appellant had established that any of the following had occurred: (1) that appellant had two cars vandalized on federal property by coworkers; (2) that she was poisoned by a coworker or workers in a break room; (3) that appellant was harassed by management and/or coworkers after her return to work in 1998; (4) that she was victimized at work and at home through the telephone; (5) that appellant was exposed to asbestos after the employing establishment put in new computer and telephone lines in 1999; and (6) that the dust exposure and the cleaning solution used caused her chronic obstructive pulmonary disorder.

<sup>2</sup> *Gisela Mittelstaedt*, Docket No. 04-2272 (issued April 20, 2005).

## LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, 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.<sup>3</sup>

Section 8128(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 review on the merits.<sup>4</sup> Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.<sup>5</sup> Likewise, evidence that does not address a particular issue involved does not constitute a basis for reopening a case.<sup>6</sup>

## ANALYSIS

Appellant did not submit any new relevant legal argument, nor did she allege that the Office erroneously applied or interpreted a specific point of law. Consequently, she is not entitled to a review of the merits of her claim based on the first and second requirements of section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, the Board finds that the evidence submitted is not relevant to the reason that appellant's claim was denied by the Office. The underlying claim for compensation was denied on the grounds that appellant had not established an employment incident occurred at the time, place and in the manner alleged. The medical reports of Dr. Guentert addressed whether appellant's pulmonary condition was related to her workplace exposure to dust. However, as appellant had not shown that she was exposed to significant amounts of dust or asbestos, this report is not relevant to the issue at hand. The Board further notes that Dr. Guentert's report of September 17, 2003 was previously submitted and is therefore also not sufficient to warrant further merit reconsideration as it is duplicative of his prior report.<sup>7</sup>

The Board notes that appellant submitted various periodical articles to the record to establish causal relationship. The Board has held that newspaper clippings, medical tests and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and appellant's federal employment as such material are of general

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<sup>3</sup> 20 C.F.R. § 10.606(b)(2)(i-iii).

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

<sup>5</sup> *Helen E. Paglinawan*, 51 ECAB 407, 591 (2000).

<sup>6</sup> *Kevin M. Fatzer*, 51 ECAB 407 (2000).

<sup>7</sup> *Helen E. Paglinawan*, *supra* note 5.

application and are not determinative of which the specific condition claimed or related to particular employment factors of incidents.<sup>8</sup>

Accordingly, the Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her request for reconsideration.

**CONCLUSION**

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her 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 December 1, 2006 is affirmed.

Issued: September 26, 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

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<sup>8</sup> *Gloria J. McPherson*, 51 ECAB 441 (2000).