

On February 18, 2006 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim, Form CA-1, alleging that she sprained her left ankle on February 3, 2006 when she

slipped off of a porch and twisted her left ankle. On February 3, 2006 Dr. Michael Cloyd, an occupational medicine practitioner diagnosed a foot sprain. On February 15, 2006 he found that appellant's foot sprain had resolved and returned her to work without limitations.

On May 5, 2006 Dr. Angus McBryde, a Board-certified orthopedic surgeon, evaluated appellant's ankle. He stated that she injured herself in November 2005 when she stepped into a hole. Dr. McBryde diagnosed posterior tibial dysfunction with probable complete rupture related to the 2005 injury. A May 12, 2006 magnetic resonance imaging (MRI) scan revealed an acute or subacute bone contusion, mild soft tissue swelling over the lateral malleolus and mild-to-moderate plantar fasciitis.

On May 23, 2006 appellant filed a recurrence of disability claim, Form CA-2a, alleging that her ankle did not properly heal after her February 2006 injury and that, after returning to work, her ankle was still swollen and sore.

By decision dated June 5, 2006, the Office accepted appellant's claim for a left ankle sprain. On the same date, the Office requested additional information from appellant and the employing establishment about the claimed recurrence of disability.

On June 16, 2006 appellant stated that she stepped into a hole and twisted her left ankle in November 2005. Because she did not realize the severity of the damage done, she continued carrying her route, though she complained daily of pain and swelling to her supervisor. On February 3, 2006 appellant slipped off of a porch and aggravated her ankle. She was treated with a wrap brace, elevation and two weeks of light-duty work. Though her ankle was still swollen and tender on February 15, 2006, the physician released her to work. Appellant worked through the pain until May 4, 2006, when she sought out a specialist because the pain was so severe that she could not walk.

On June 16, 2006 Dr. McBryde stated that after appellant injured herself in November 2005 she began to limp as she experienced pain, swelling and gradual deformity in her left foot. On February 3, 2006 appellant aggravated her preexisting condition. When Dr. McBryde examined her on May 4 and 31, 2006, he found that her severe foot and ankle problems did not antedate her November 2005 injury and were certainly related to her February 3, 2006 employment injury. Dr. McBryde reported that the May 12, 2006 MRI scan showed major and long-standing problems. He found that appellant's condition was deteriorating and would continue to do so without treatment.

On June 20, 2006 the employing establishment stated that it had no record of an injury report or claim in November 2005. Nesa Smith, the customer service manager at the employing establishment, stated that appellant did not report any difficulty in performing her regular duties after February 15, 2006. She stated that appellant had used 25.13 hours of leave in that time, but she did not know why the time was used.

By decision dated July 18, 2006, the Office denied appellant's claim for recurrence of disability. It also noted that appellant's condition, which was incorrectly accepted as a sprained ankle, should have been accepted as a sprained left foot.

On an undated and unsigned appeal request form, received on September 7, 2006, appellant requested reconsideration. She submitted no statement or evidence with her request.

By decision dated September 19, 2006, the Office denied appellant's request for reconsideration on the grounds that she did not state the basis for her reconsideration and did not supply any new and relevant evidence.

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: (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 July 18, 2006 merit decision. Her September 7, 2006 request for reconsideration was not accompanied by any evidence or argument. Therefore, appellant did not show that the Office erroneously applied or interpreted a specific point of law, did not advance any relevant legal arguments, and did not present any relevant and pertinent new evidence. The Board finds that appellant is not entitled to further review on the merits of her case because she did not meet any of the requirements of section 10.606(b)(2).⁴

CONCLUSION

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

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.606(b)(2).

³ 20 C.F.R. § 10.608(b).

⁴ 20 C.F.R. § 10.606(b)(2)(i) - (iii).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 19, 2006 is affirmed.

Issued: March 17, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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