

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

L.M., Appellant

and

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Chicago, IL,
Employer**

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**Docket No. 07-821
Issued: October 23, 2008**

Appearances:

*Armand L. Andry, Esq., for the appellant
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 February 5, 2007 appellant, through her attorney, filed a timely appeal from a November 20, 2006 nonmerit decision of the Office of Workers' Compensation Programs denying her request for reconsideration. As more than one year has elapsed since the last merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of the case.¹

ISSUE

The issue is whether the Office properly denied appellant's request for merit review of her claim pursuant to 5 U.S.C. § 8128.

¹ See 20 C.F.R. §§ 501.2(c) and 501.3.

FACTUAL HISTORY

On June 23, 2005 appellant, then a 42-year-old part-time regular mail processor, filed an occupational disease claim alleging that she sustained stress, high blood pressure, hypertension, diabetes and mental and emotional disorders causally related to factors of her federal employment. She attributed her condition to disparate treatment and harassment by her supervisor in matters involving her work hours and leave. Appellant did not stop work.

By decision dated October 12, 2005, the Office denied appellant's claim on the grounds that she did not establish an injury in the performance of duty. It found that she had not provided a detailed statement identifying the employment factors she claimed caused her condition.

On October 11, 2006 appellant requested reconsideration. She indicated that she was enclosing new evidence, including a medical opinion. Appellant also authorized representation by an attorney.

In a progress report dated March 17, 2006, Dr. Samuel J. Chmell, a Board-certified orthopedic surgeon, diagnosed carpal tunnel syndrome and found that appellant was disabled from employment. In letters dated October 5 and 13, 2005, the employing establishment instructed appellant to report for a fitness-for-duty examination. On October 16, 2006 appellant underwent a right carpal tunnel release.

By decision dated November 20, 2006, the Office denied appellant's request for reconsideration after finding that the evidence submitted was insufficient to warrant merit review of the claim. It noted that it had transferred the evidence regarding her carpal tunnel syndrome to the relevant case file.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁵

² 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁶ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁷ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁸

ANALYSIS

Appellant filed an occupational disease claim alleging that she sustained emotional and mental disorders, stress, high blood pressure, hypertension and diabetes due to harassment and disparate treatment by her supervisor. By decision dated October 12, 2005, the Office denied her claim after finding that she had not submitted a detailed statement clearly identifying the factors of employment to which she attributed her stress-related condition.⁹

On October 11, 2006 appellant requested reconsideration. She noted that she was submitting additional medical evidence. The Office received a medical report from a physician diagnosing carpal tunnel syndrome and medical evidence regarding her October 16, 2006 carpal tunnel release. It further received October 2005 letters from the employing establishment instructing appellant to appear for a fitness-for-duty examination. This evidence, however, is not relevant to the pertinent issue of whether appellant has submitted sufficient factual evidence to establish a compensable employment factor in her emotional condition claim. Evidence that does not address the particular issue involved does not warrant reopening a case for merit review.¹⁰

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit new and relevant evidence not previously considered. As she did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.

On appeal, appellant's attorney contends that she submitted evidence with her request for reconsideration which was not considered by the Office, including an October 9, 2006 medical report. The evidence, however, is not contained in the case record.¹¹

⁶ *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

⁷ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

⁸ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

⁹ A claimant's burden of proof includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected the condition or conditions for which compensation is claimed. *Janet L. Terry*, 53 ECAB 570 (2002); *John Polito*, 50 ECAB 347 (1999).

¹⁰ *Patricia G. Aiken*, 57 ECAB 359 (2006); *Freddie Mosley*, 54 ECAB 255 (2002).

¹¹ Appellant submitted new evidence on appeal; however, the Board has no jurisdiction to review evidence that was not before the Office at the time of its final decision. See 20 C.F.R. § 501.2(c); *George A. Rodriguez*, 57 ECAB 224 (2005).

CONCLUSION

The Board finds that the Office properly denied appellant's request for merit review of her claim pursuant to section 8128.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 20, 2006 is affirmed.

Issued: October 23, 2008
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