

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

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**C.R., Appellant**

**and**

**U.S. POSTAL SERVICE, METRO POSTAL  
STORE, Miami, FL, Employer**

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**Docket No. 09-72  
Issued: February 24, 2009**

*Appearances:*  
*Victor A. Careaga, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 9, 2008 appellant, through his attorney, filed a timely appeal from the Office of Workers' Compensation Programs' decision dated July 9, 2008, which denied his request for merit review. The most recent merit decision is the January 8, 2008 decision of the Board. The Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.<sup>1</sup>

**ISSUE**

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

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<sup>1</sup> The most recent merit decision is the January 8, 2008 decision of the Board, which was finalized 30 days after it was issued and is not subject to additional merit review. 20 C.F.R. § 501.2(c).

## **FACTUAL HISTORY**

This case has previously been before the Board on appeal. On August 17, 2005 appellant, then a 58-year-old letter carrier, filed a traumatic injury alleging that he sustained an injury to his right shoulder and neck on July 1, 2005 when he pulled a hamper full of boxes. The Office denied appellant's claim on October 5, 2005 on the grounds that he failed to establish that the alleged incident occurred. Appellant submitted additional factual and medical evidence and requested reconsideration on November 21, 2005. On February 9, 2007 the Office denied appellant's claim finding that he had not submitted the necessary factual and medical evidence to establish fact of injury. Appellant again requested reconsideration and by decision dated May 10, 2007, the Office reviewed his claim on the merits and denied modification of its prior decisions. He filed an appeal with the Board. In the January 8, 2008 decision, the Board found that appellant had submitted sufficient factual evidence to establish that the employment incident occurred, but failed to submit the necessary medical evidence to establish that the employment injury resulted from this incident.<sup>2</sup> The facts and the circumstances of the case as set fourth in the Board's prior decision are adopted herein by reference.

On June 13, 2008 appellant requested reconsideration before the Office. He stated that he was submitting additional factual and medical evidence. The Office informed appellant that there was no supporting documentation enclosed. Appellant provided a statement dated April 28, 2008 that he had obtained additional medical records from Dr. Luis R. Pagan, a Board-certified neurosurgeon.

By decision dated July 9, 2008, the Office denied appellant's claim finding that his request for reconsideration and statement were not relevant to the central issue of his claim for a traumatic injury and were not sufficient to require review of the merits of his claim.

## **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>3</sup> the Office regulations provide that the evidence or argument submitted by 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.<sup>4</sup> 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.<sup>5</sup>

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<sup>2</sup> Docket No. 07-1683 (issued January 8, 2008).

<sup>3</sup> 5 U.S.C. §§ 8101-8193, § 8128(a).

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

<sup>5</sup> *Id.* at § 10.608(b).

### ANALYSIS

The most recent merit decision, the Board's January 8, 2008 decision, denied appellant's claim for a traumatic injury on the basis that he failed to submit sufficient medical opinion evidence establishing that he sustained an injury as a result of a July 1, 2005 employment incident. Appellant requested reconsideration before the Office, indicating that relevant new evidence regarding his claim was submitted. His letter requesting reconsideration did not contain the alleged attachments. The Office informed appellant of this defect and he resubmitted his letter as well as a brief statement that he had obtained additional medical records. This statement is not sufficient to require the Office to reopen his claim for consideration of the merits. Appellant did not submit any relevant new medical evidence, any new argument or show that the Office erroneously interpreted or applied a rule of law. As his request for reconsideration did not comply with the requirements of the Act, the Office properly declined to reopen his claim for consideration of the merits of his claim.

### CONCLUSION

The Board finds that the Office properly declined to reopen appellant's claim for consideration of the merits.

### ORDER

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 9, 2008 is affirmed.

Issued: February 24, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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