

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

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**G.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Garland, TX, Employer**

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**Docket No. 09-147  
Issued: June 23, 2009**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 20, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 14, 2008 nonmerit decision denying his request for merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. Because more than one year has elapsed between the Office's last merit decision dated June 27, 2007 and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.<sup>1</sup>

**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).

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<sup>1</sup> See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

## **FACTUAL HISTORY**

On November 8, 2005 appellant, a 42-year-old lobby director, filed an occupational disease claim alleging that he sustained a left rotator cuff tear as a result of performing duties outside of his work restrictions and that he first became aware of his condition on December 5, 2004. In a letter received on December 1, 2005, he alleged that he also sustained injuries to his back due to excessive work activities. The Office accepted appellant's claim for nontrauma complete rupture of the left rotator cuff.<sup>2</sup>

Appellant submitted reports dated December 30, 2004 to June 21, 2005, from his treating physician, Dr. Kenneth Bayles, a Board-certified osteopath specializing in orthopedic surgery, who diagnosed lumbar intervertebral disc disorder, lumbar myalgia and myofascitis and left shoulder strain/rotator cuff tear. By placing a checkmark in the "yes" box, Dr. Bayles indicated that appellant's diagnosed conditions were work related.

In a decision dated May 17, 2006, the Office found that the medical evidence failed to establish that appellant sustained a back injury causally related to his federal employment.

On May 26, 2006 appellant requested reconsideration. In a May 23, 2006 report, Dr. Bayles reiterated his previous diagnoses and opined that appellant's conditions were related to his November 28, 2001 work injury, rather than his injury of December 5, 2004. He also stated that appellant reached maximum medical improvement as to his back and shoulder conditions on May 6, 2004. In a July 20, 2006 report, Dr. Bayles opined that appellant had a 20 percent whole person permanent impairment due to his accepted shoulder condition. In a May 24, 2006 report, Dr. B.D.D. Greer, a treating physician, stated that appellant's lumbar injury was exacerbated by his employment duties, which required him to lift and carry heavy objects.

By decision dated August 24, 2006, the Office denied modification of its previous decision. The claims examiner noted that a previous traumatic injury claim was accepted for left shoulder injury and lumbar strain under File No. xxxxxx525. He reviewed the contents of a medical report dated March 16, 2004 from Dr. Farook Seloid, a treating physician, and a report dated July 19, 2004 from Dr. Bernie McCaskill, a Board-certified orthopedic surgeon. The Office found that the medical evidence failed to establish that appellant's claimed back condition was caused by factors of employment.

On June 4, 2007 appellant again requested reconsideration. He noted frustration in not receiving compensation for wage loss related to his claim for low back pain. Appellant submitted copies of documents previously received and considered by the Office under both claims: a copy of a notice of recurrence dated November 8, 2005; and reports from Dr. Bayles dated May 9 and December 9, 2004, February 3 and June 21, 2005 and May 23, 2006.

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<sup>2</sup> The record reflects that appellant's November 29, 2001 traumatic injury claim was accepted for a left shoulder injury and lumbar strain. (File No. xxxxxx525) He returned to limited duty on June 4, 2004. On December 29, 2005 File No. xxxxxx065 was combined with File No. xxxxxx525, which became the master file.

By decision dated June 27, 2007, the Office denied modification of its previous decisions, finding that the evidence was insufficient to establish that appellant's back condition was causally related to his modified duties.

On June 24, 2008 appellant requested reconsideration of the Office's previous decisions. He disagreed with the denial of his claim and contended that he was entitled to wage-loss compensation and a schedule award for his back condition. In a March 17, 2008 report, Dr. Bayles noted diminished range of motion of the cervical and lumbar spine, as well as occasional pain in the low back and left shoulder. He did not provide a diagnosis or an opinion as to the cause of appellant's condition.

Appellant also submitted a March 16, 2004 work restrictions from Dr. Seloid; April 20, 2004 work restriction from Dr. Greer; a May 14, 2004 letter from the Office to Dr. Greer; July 19, 2004 work restrictions from Dr. McCaskill; and a September 22, 2004 impairment rating from Dr. Bayles.

By decision dated July 14, 2008, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant further merit review. It found that the evidence submitted was not relevant to the issue to be decided, namely whether appellant's current back condition was causally related to his employment.

### **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> 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.<sup>5</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>6</sup> The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>7</sup>

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<sup>3</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

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

<sup>5</sup> *Id.* at § 10.607(a).

<sup>6</sup> *Id.* at § 10.608(b).

<sup>7</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

### **ANALYSIS**

Appellant's June 24, 2008 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

In support of his request for reconsideration, appellant submitted the following documents: March 16, 2004 work restrictions from Dr. Seloid; April 20, 2004 work restrictions from Dr. Greer; a May 14, 2004 letter from the Office to Dr. Greer; July 19, 2004 work restrictions from Dr. McCaskill; a September 22, 2004 impairment rating from Dr. Bayles; and a March 17, 2008 report from Dr. Bayles, wherein he noted diminished range of motion of the cervical and lumbar spine, as well as occasional pain in the low back and left shoulder. None of the evidence submitted addressed the relevant issue, namely the causal relationship between appellant's current back condition and factors of his employment. Additionally, the medical reports are either duplicates of those previously received and considered by the Office or they reiterate information contained in documents already of record. Therefore, they are cumulative or duplicative in nature.<sup>8</sup> The Board finds that the evidence submitted does not constitute relevant and pertinent new evidence not previously considered by the Office.<sup>9</sup> Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his June 24, 2008 request for reconsideration.

### **CONCLUSION**

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>8</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

<sup>9</sup> See *Susan A. Filkins*, 57 ECAB 630 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 14, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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